

RUFINA NAÑAGAS, WIDOW OF PIMENTEL, LUDOVICO PIMENTEL, FROILAN PIMENTEL, PIA PIMENTEL AND PABLO PIMENTEL, APPLICANTS AND APPELLANTS, VS. THE MUNICIPALITY OF SAN NARCISO, THE INHA...*G.R. No. 27206. December 31, 1927*

Ponente: OSTRAND, J.

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On June 11, 1924, Rufina Nañagas, widow of Ramon Pimentel, and her children Ludovico, Froilan, Pia and Pablo Pimentel filed an application for the registration of a tract of land situated in the barrio of San Andres, municipality of San Narciso, Province of Tayabas, and embracing an area of over 1,309 hectares. The application was opposed by the Director of Lands, the Director of Forestry, Agapito Villaseñor, the municipality of San Narciso, the inhabitants of the barrio of San Andres, and the heirs of Filomeno Esquieres.

Upon trial the Court of First Instance rendered a judgment sustaining the opposition of the Director of Forestry by ordering the exclusion of 32 hectares of land situated to the west of a straight line drawn from point 16 to point 30 on the plan accompanying the application and further ordering that three trails indicated on Exhibit BF-1, a copy of the plan accompanying the application, be surveyed and excluded from the plan. The court also sustained the opposition of the municipality of San Narciso and the inhabitants of the barrio of San Andres in regard to a rectangular tract of land 300 meters wide and 500 meters long which constitutes the inhabited portion of the barrio. The other oppositions were denied and the rest of the land was ordered registered in the names of the applicants, one-half being adjudicated to Rufina Nañagas and the other half to her children in undivided equal shares. From this judgment the applicants appealed.

It appears from the record that sometime during the year 1894, Ramon Pimentel, the applicants' predecessor in interest and a lawyer by profession, purchased a tract of land from Francisco Arrego & Co. for the sum of P150, but no deed of sale appears to have been executed. Shortly afterwards Pimentel applied for a possessory information in regard to the land and a possessory title was issued to him in 1895 and duly recorded with the register of property. The land is described in the possessory information as bounded on the north with the estero Cayab; on the east by the sea; on the south by the pasture of Brigido Lopinac; and on the west by certain hills or mountains enumerated in the document. On the north, east and west, these boundaries correspond to those of the land sought to be registered, but the western boundary is somewhat uncertain. The area stated in the possessory information is only about 743 hectares, 566 hectares less than the area stated in the application for registration. The land has been used as pasture for cattle and none of it appears to have been cultivated by the Pimentels.

In their assignments of error the appellants allege that the court below erred:

(1) In sustaining the oppositions of the municipality of San Narciso and the inhabitants of the barrio of San Andres in regard to the rectangular portion of land designated on the plan as the barrio of San Andres;

- (2) In permitting said opponents to testify in regard to conversations had with the applicants' predecessor in interest;
- (3) In sustaining the opposition of the Director of Forestry in regard to the portion which is alleged to be 32 hectares in extent and is indicated in the plan Exhibit BF-1;
- (4) In sustaining the opposition of the Director of Forestry in regard to the three trails alleged to exist within the land which forms the object of the application for registration;
- (5) In ordering the exclusion of the portions of land mentioned in the foregoing assignments of error and in denying the registration of the same.

Under the first assignment of error, the appellants contend that the barrio of San Andres is within the limits of the land described in the possessory title and that the inhabitants of the barrio have on various occasions acknowledged that Ramon Pimentel was the owner of the land in dispute. In support of this contention, the appellants have presented in evidence Exhibits H, H-1 and H-2. The first of these exhibits is a petition dated September 1, 1912, and signed by forty-six of the inhabitants of San Andres. It is addressed to Ramon Pimentel and the petitioners acknowledge therein that the land occupied by the inhabitants of the barrio is included in Pimentel's possessory title and that he is the owner of that land. They therefore ask that he donate the land to them or permit them to purchase it at a reasonable price and that he also permit them to plant coconuts on the land outside of the inhabited part of the barrio. The petitioners further asked that they be given a prompt answer so that they, if their request was granted, could proceed immediately to improve and build up the barrio or so that they, in the to them improbable event of an unfavorable answer, could "dissolve" the barrio and go elsewhere.

Exhibit H-1 is the minutes of a meeting of a "junta" of the district of San Andres held on January 25, 1913, and at which meeting it was resolved that the construction of a school-house should be commenced as soon as an answer was received from the owner of the land on which the barrio was situated provided said answer conceded the absolute ownership of said land to the inhabitants of San Andres. It was further resolved that one Alejandro Banal be authorized to confer with Ramon Pimentel in regard to the title to the land.

Exhibit H-2 reads as follows in translation:

"S. ANDRES, February 28, 1913

"Mr. RAMON PIMENTEL:

"We, the undersigned, residents of San Andres, municipality of San Narciso, Province of Tayabas, respectfully and humbly urge that:

"(1) Whereas up to this time we have not as yet had the pleasure of receiving your answer to our former petition;

"(2) Whereas S. Narciso is already an independent municipality, this is of your jurisdiction, and in this way may be arranged the filing of declarations of real properties for the purposes of the payment of the real property tax in accordance with law;

"(3) Whereas we, who have been paying, continue to pay, and are about to pay the assessment tax of our respective houses in the block of S. Andres in the land included in its record without any order whatsoever, and;

"(4) Whereas the Municipal Council cannot make any improvement in this town so long as the owner is different, which hinders the progress of this town;

"Now, therefore, (1) You donate, as you have stated previously, the land where this town is established with or without houses, lots and properties used as lots containing an area of 500 meters long by 300 meters wide from the mouth of the river in a northward direction and from said mouth in a westward direction; (2) that if it is to be donated that the same be stated in a legalized document; (3) that conditions be imposed upon those who are to cultivate your land outside of the perimeter above-described.

"Respectfully,

"(Forty-two signatures)"

The admissions contained in the exhibits referred to seem at first sight strong evidence in favor of the appellants but they are, in our opinion, sufficiently refuted by the evidence for the opposition.

The inhabited portion of the barrio of San Andres is situated on the sea shore, about equidistant from the NE. and SE. corners of the applicants' land. It was officially established as a visita in the year 1879 by both civil and ecclesiastical authority (see Exhibit SA-3 of the opposition), and it is not disputed that there are now about 700 persons living in the barrio. It further appears that the barrio has had a chapel since time immemorial, and that there are now a municipal building, a school-house, and public streets regularly laid out. It also clearly appears that the barrio was inhabited prior to its official establishment in 1879, and that the Pimentels have never been in actual possession and occupation of the inhabited portion of the barrio, and that they base their claim to title exclusively upon the possessory information and upon the admissions of some of the inhabitants. The possessory information title rests, of course, on possession and as at the time of the institution of the possessory information proceedings, Ramon Pimentel was not in possession of the land in dispute, the inclusion of that land in the possessory title was based on a misrepresentation of which Ramon Pimentel could not legally take advantage, and neither can his heirs, no matter whether the misrepresentation was intentional or not. This in itself is sufficient to defeat the appellants' claim to the land, but it may also be noted that in his tax declarations, Ramon Pimentel described his land as bounded on the east by the sea and by the municipality of San Narciso of which the barrio of San Andres forms a part, thus in a measure corroborating the testimony of the witness Alejandro Banal to the effect that Ramon Pimentel admitted to him that he was not the owner of the inhabited portion of the barrio but that it belonged to the inhabitants. It is further to be observed that many of the inhabitants of the barrio declared their lots and houses for taxation immediately after the establishment of the land tax system and have continued to pay their taxes up to the time of the trial of the case. In these circumstances, but little weight can be given the admissions contained in Exhibits H, H-1 and H-2; the exhibits were not signed by all of the inhabitants of the barrio and it was evident that the admissions were made by persons who were not informed of their rights. Our conclusion is that the court below did not err in ordering the exclusion of the land claimed by the municipality of San Narciso and the inhabitants of the barrio of San Andres.

The second assignment of error relates principally to the testimony of the witness Alejandro Banal in which he stated that when he carried the petition, Exhibit H-2, to Ramon Pimentel in the month of March, 1913, Don Ramon after reading the petition said: "Why are you asking me to donate or sell the land when it belongs to San Andres?" This statement was objected to, apparently on the ground that the witness was a party to the present action and therefore, under paragraph 7 of section 383 of the Code of Civil Procedure, could not testify to statements made by his adversary, now deceased. The paragraph cited reads as follows:

"Parties or assignors of parties to an action or proceeding, or persons in whose behalf an action or proceeding is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind."

It will be readily seen that the restriction does not apply to the present instance; the witness was not a party or assignor of a party to an action or proceeding against an executor or administrator or other representative of a deceased person. He was not a plaintiff but merely a defendant in a land registration proceeding instituted by the heirs of the deceased. Testimony such as that in question must be received with caution and can ordinarily be given but little weight, but it is not inadmissible and the court below did not err in this respect.

The third assignment of error raises a question of facts in regard to which we see no sufficient reason to disturb the findings of the court below. The forest land in question is situated on the western boundary line of the tract claimed by the appellants and as the location of that line is somewhat uncertain and as the area of the land described in the application for registration is so much larger than the area stated in the title document, the probability is that the land ordered excluded by the court below is outside of the true line. The rule is that land described as bounded by a mountain extends only to the foot thereof in the absence of clear evidence to the contrary. In this case there is undisputed evidence that the parcel of land in question is stony and is situated on a steep hillside.

The fourth assignment of error is well taken. There is no evidence that the trails referred to in the assignment are public roads nor have we been able to find sufficient evidence in the record to show that the lots are easements of way acquired by prescription. The law pertaining to the matter is very fully considered in the case of Cuaycong vs. Benedicto (37 Phil., 781), and need not here be further discussed. In any event, if there are any highways or ways, public or private, established by law on the land, their existence or use will not be affected by the registration proceedings (subsec. 3, sec. 39, Act No. 496).

The fifth assignment of error requires no comment.

The oppositions of Agapito Villaseñor and the heirs of Filomeno Esquieres are closely related to each other and are disposed of adversely to said opponents in our decision in case G. R. No. 27207.[1]

For the reasons stated the appealed judgment is hereby modified by eliminating therefrom the provisions for the deslinde or survey of the three roads or trails therein mentioned and by limiting the extent of the rectangular portion of land set aside for the inhabitants of the barrio of San Andres to 500 meters from north to south and 300 meters from east to west. In all other respects the aforesaid judgment is affirmed without costs. So ordered.

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

[1] See next case.

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