

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER AND APPELLANT, VS. ISIDORO ABAJA ET AL., CLAIMANTS AND APPELLEES.

G.R. No. 28847. October 24, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

This is an appeal taken by the Government of the Philippine Islands from the judgment of the Court of First Instance of Occidental Negros in cadastral proceeding G. L. R. O. Record No. 174, adjudicating lots Nos. 804, 909 and 910 of cadastral division of Ilog, with their improvements, to the estate of Rafael O. Ramos, and ordering that upon the judgment becoming final the proper titles issue.

In support of its appeal appellant assigns the following alleged errors as committed by the trial court in its judgment, to wit:

- "1. The lower court erred in not holding that the heirs of Rafael O. Ramos are only entitled to the registration of 283 hectares, 34 ares, and 79 centares,
- "2. The lower court erred in not following the actual seashore line of the Panay Sea, and the Bagacay and Ilog Rivers, on the north, east, and west, respectively as the natural and permanent boundaries of the land sought to be registered herein.
- "3. The lower court erred in not holding that the difference of 490 hectares, 13 ares and 4 centares between the total area of the lots in dispute and that appearing in the title Exhibit A was gained from the sea and therefore belonged to the State.
- "4. The lower court erred in adjudicating the decree and registration of the lots in question to the heirs of Rafael O. Ramos, and in denying the Government's motion for a new trial."

The following facts were proved at the trial:

On October 24, 1881, Carlos Gemora acquired by composition with the State the ownership of a parcel of public land situated in the sitio of Bagacay, within the jurisdiction of the town of Ilog, of the Province of Negros Island, now Occidental Negros, with an area of 283 hectares, 34 ares and 79 centares, equivalent to 282 cavanos, 5 gantas and 1 chupa of seed rice, the boundaries of which are: On the north, the shore; on the east, Bagacay River and lands cultivated by Mariano Mayan; on the south, lands tilled by Raymundo Sibacao, Mauricio Carian, Braulia Beroza, Juan Mayan, Ana Carian, Ynes Tiboasa, Juan Lirasan, Ana Carian, Felipe Bravo, Francisco Campillanos, Saturnino Carian, Miguel Carian, Juliana Barumban, Proso Sibacao, Doroteo Tibos, Leocadio Toro, Leon Unayan, Doroteo Tibos, and Florentino Tibo; and on the west, the Great River of Ilog (Exhibit A). Attached to said composition title with the State was a plan of said land drawn up by an expert surveyor, from which it appears that the land is covered with mangrove trees (Exhibit H). Carlos Gemora mortgaged said land to Manuel Sembrano Jochinguan who, in view of the fact that the former was not able to release the land from said

mortgage, foreclosed it; and it was sold at public auction to Maximiano Espinosa in his capacity as administrator of the Estate of the deceased Manuel Sembrano Jochinguan. Delfin Sembrano, who succeeded his father Manuel Sembrano Jochinguan, being his only son and universal heir, sold said land to Rafael O. Ramos, now deceased. Even during Carlos Gemora's lifetime he possessed the said land and had 300 cocoanut trees planted thereon. After his death his children succeeded him in the possession of said land and were in the enjoyment of its products until it was sold at public auction to Maximiano Espinosa in his aforementioned capacity. Maximiano Espinosa managed said land in this capacity until it was sold by Delfin Sembrano to Rafael O. Ramos, who possessed the same, enjoying its fruits, among which were included the contracts of cutting timber and firewood from the year 1906. In the year 1916 Delfin Sembrano declared the land for the payment of the land tax, its area being 272 hectares, 82 ares and 79 centares.

The Government of the Philippine Islands tried to prove that the lots Nos. 804, 909 and 910, in question are mangrove lands, and are covered with trees of commercial value consisting of apiapi, bacauan and piagao; that many persons cut timber and firewood on said lots, and that the latter are more valuable as forest than as agricultural land. According to the cadastral survey lots Nos. 804, 909 and 910 have an area of 773 hectares, 47 ares and 83 centares.

The only question to decide in the present appeal is whether the land described in the composition title with the State, executed in favor of Carlos Gemora, is identical with that described in the cadastral plan and consisting of lots Nos. 804, 909 and 910.

The Government of the Philippine Islands contends that the land described in the cadastral plan is over 500 hectares greater in area than that described in the composition title and in the plan attached thereto, the land in excess having been formed by accession due to the movement of the waters of Panay bay or gulf, and that, therefore, it belongs to the State. However, there exists no conclusive evidence that such natural marine phenomenon has taken place. According to the said plan Exhibit H, attached to the composition title with the State, the land referred to therein is mangrove land. The same natural boundaries that existed at that time the title was executed still exist and are the same as those that appear in the plan Exhibit H and in the cadastral survey. If there has not been any perceptible change in the lines of the shore of the gulf or bay of Panay, caused by the recession of the waters of the sea,—there being no sufficient evidence as to such change,—the land noted on said composition title with the State must be the same land described in the cadastral plan as consisting of lots Nos. 804, 909 and 910. This being the case, the great difference between the two measurements must be due to either an error in calculation or to some fraud in the drawing of the plan Exhibit H whereby it was made to include a greater portion of land than that granted by composition through the marking out of the natural boundaries. The fact that the Royal Decree of August 20, 1880, required that the sketch show the exact area and boundaries of the lands acquired by purchase or composition is no guarantee against any fraud or error that might be committed in drawing the proper plans, because, considering the deficiency in the procedures adopted during the Spanish Government, and the inexperience of the surveyors, many cases have been found in which great errors in calculation with respect to the area were committed, thus making the area of the lands vary greatly.

Moreover, Delfin Sembrano, sole and universal heir of Manuel Sembrano Jochinguan, in whose favor said land was mortgaged by its original owner Carlos Gemora and adjudicated at public auction by virtue of the execution, declared said land to have 772 hectares, 82 ares and 79 centares for the purposes of the land tax, which gives us to understand that from the beginning the successive owners of the land here in question considered it to include a far greater area than that which the title indicated and indicates.

In conclusion, and taking into consideration the repeated doctrines laid down by this court that when the boundaries are certain and no alteration thereof has been proven, the area included within such boundaries shall

prevail over that which the title shows.

In view of the foregoing, and not finding any error in the judgment appealed from, the same is affirmed in all its parts, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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