

JAMES J. RAFFERTY, PLAINTIFF AND APPELLANT, VS. PROVINCE OF CEBU, DEFENDANT AND APPELLEE.*G.R. No. 29161. December 29, 1928*

Ponente: STATEMENT For cause of action in case No. 6336 in the lower court, plaintiff alleges that he is the owner of lot No. 522 in question, and that the defendant usurped a large portion of it for a park, and for such purpose constructed a house thereon and enclosed it with wire. That thereafter the plaintiff made numerous demands for the possession of the land and the removal of the improvements, all of which have been refused. As a second cause of action, plaintiff alleges that lots Nos. 522 and 523 of the Hacienda Banilad did not have access to any street, and he asked for a right of way through lots Nos. 525 and 524, under article 565 of the Civil Code, stating that he is willing to pay a reasonable price for a strip 8 meters wide. Plaintiff's third cause of action is in the nature of a supplemental complaint, in which he alleges that he is a resident of San Francisco, California, and that the defendant refused to show his attorneys the document which purports to have been executed by plaintiff in 1912, in which for the sum of P226 he transferred to the defendant lots Nos. 523 and 541, and 6,723 square meters of lot No. 522, by reason of which plaintiff had to come to the Philippines to attend the trial of this case, and that in doing so he incurred expenses amounting to P1,920, and was deprived of the profit of his ordinary work, for which he prays judgment against the defendant for P4,420, with legal interest. The motion to file a supplemental complaint was denied by the court. In his amended complaint in case No. 6362 in the lower court, plaintiff alleges that he is the owner of lot No. 541 consisting of 4,030 square meters across which the municipality of Cebu constructed the Fructuoso Ramos Street, thereby appropriating to itself 1,154 square meters without the consent of the plaintiff, by reason of which the plaintiff has been damaged in the sum of P1,600, for which he prays a corresponding judgment. For answer to the two different complaints, the defendant made a general and specific denial, and as a special defense alleged that on March 15, 1912, the plaintiff sold to the defendant for the sum of two hundred twenty-six pesos 6,723 square meters from and out of lot No. 522, together with lots Nos. 523 and 541, and because of the fact that at the time of the sale, the titles were still in the name of the Government of the Philippines, the plaintiff could not transfer title to the defendant. That since that time the defendant has been occupying and possessing the land as owner peacefully, quietly and adversely to the whole world and with the knowledge and consent of the plaintiff, and in case No. 6362, as a special defense the defendant alleged that lot No. 541, together with lots Nos. 523 and 522-B, as stated in the first special defense, was acquired by purchase by the defendant from the plaintiff for a consideration of 7226, and the Province of Cebu transferred subplot No. 541-B to the municipality of Cebu for the construction of Fructuoso Ramos Street, for the occupation, possession and use of said property, since which time the defendant has been in possession as owner peacefully and adversely, and as a cross-complaint, the defendant, Province of Cebu, alleges that it is a public corporation organized and existing under the laws of the Philippine Islands with authority to acquire real property, and that as such owner of the land in question, and through such adverse possession, and having made public improvements thereon, it prays that the complaint be dismissed, and that the plaintiff be ordered to execute to the defendant the necessary deeds for the transfer of the title to lots Nos. 523 and 541, and to the 6,723 square meters of lot No. 522, known as subplot No. 522-B, and that it have judgment against him for costs. To this cross-complaint, the plaintiff invokes the provisions of paragraph 5 of section 335 of Act No. 190, and certain provisions of the Jones Law, and alleges that the defendant is estopped to claim and assert that it is the owner of the land in question, and in substance that the defendant is not the owner of the land; that it has never been in possession of it, and that the plaintiff is the owner and entitled to its possession, and that any title which the defendant may have or claim was obtained through fraud, and for such reason is null and void. Upon such issues the two cases were tried as one, and in an exhaustive opinion the lower court found all of the material facts for the defendant, dismissed plaintiff's complaint, and rendered judgment for the defendant as prayed for in its cross-complaint, from which plaintiff appeals and files a brief of one hundred fifty-six pages, in which he makes forty-one assignments of

error. JOHNS, J.

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STATEMENT

For cause of action in case No. 6336 in the lower court, plaintiff alleges that he is the owner of lot No. 522 in question, and that the defendant usurped a large portion of it for a park, and for such purpose constructed a house thereon and enclosed it with wire. That thereafter the plaintiff made numerous demands for the possession of the land and the removal of the improvements, all of which have been refused. As a second cause of action, plaintiff alleges that lots Nos. 522 and 523 of the Hacienda Banilad did not have access to any street, and he asked for a right of way through lots Nos. 525 and 524, under article 565 of the Civil Code, stating that he is willing to pay a reasonable price for a strip 8 meters wide. Plaintiff's third cause of action is in the nature of a supplemental complaint, in which he alleges that he is a resident of San Francisco, California, and that the defendant refused to show his attorneys the document which purports to have been executed by plaintiff in 1912, in which for the sum of P226 he transferred to the defendant lots Nos. 523 and 541, and 6,723 square meters of lot No. 522, by reason of which plaintiff had to come to the Philippines to attend the trial of this case, and that in doing so he incurred expenses amounting to P1,920, and was deprived of the profit of his ordinary work, for which he prays judgment against the defendant for P4,420, with legal interest.

The motion to file a supplemental complaint was denied by the court.

In his amended complaint in case No. 6362 in the lower court, plaintiff alleges that he is the owner of lot No. 541 consisting of 4,030 square meters across which the municipality of Cebu constructed the Fructuoso Ramos Street, thereby appropriating to itself 1,154 square meters without the consent of the plaintiff, by reason of which the plaintiff has been damaged in the sum of P1,600, for which he prays a corresponding judgment.

For answer to the two different complaints, the defendant made a general and specific denial, and as a special defense alleged that on March 15, 1912, the plaintiff sold to the defendant for the sum of two hundred twenty-six pesos 6,723 square meters from and out of lot No. 522, together with lots Nos. 523 and 541, and because of the fact that at the time of the sale, the titles were still in the name of the Government of the Philippines, the plaintiff could not transfer title to the defendant. That since that time the defendant has been occupying and possessing the land as owner peacefully, quietly and adversely to the whole world and with the knowledge and consent of the plaintiff, and in case No. 6362, as a special defense the defendant alleged that lot No. 541, together with lots Nos. 523 and 522-B, as stated in the first special defense, was acquired by purchase by the defendant from the plaintiff for a consideration of 7226, and the Province of Cebu transferred subplot No. 541-B to the municipality of Cebu for the construction of Fructuoso Ramos Street, for the occupation, possession and use of said property, since which time the defendant has been in possession as owner peacefully and adversely, and as a cross-complaint, the defendant, Province of Cebu, alleges that it is a public corporation organized and existing under the laws of the Philippine Islands with authority to acquire real property, and that as such owner of the land in question, and through such adverse possession, and having made public improvements thereon, it prays that the complaint be dismissed, and that the plaintiff be ordered to execute to the defendant the necessary deeds for the transfer of the title to lots Nos. 523 and 541, and to the 6,723 square meters of lot No. 522, known as subplot No. 522-B, and that it have judgment against him for costs.

To this cross-complaint, the plaintiff invokes the provisions of paragraph 5 of section 335 of Act No. 190, and certain provisions of the Jones Law, and alleges that the defendant is estopped to claim and assert that it is the owner of the land in question, and in substance that the defendant is not the owner of the land; that it has never

been in possession of it, and that the plaintiff is the owner and entitled to its possession, and that any title which the defendant may have or claim was obtained through fraud, and for such reason is null and void.

Upon such issues the two cases were tried as one, and in an exhaustive opinion the lower court found all of the material facts for the defendant, dismissed plaintiff's complaint, and rendered judgment for the defendant as prayed for in its cross-complaint, from which plaintiff appeals and files a brief of one hundred fifty-six pages, in which he makes forty-one assignments of error.

JOHNS, J.:

The record in this case is voluminous, and the trial court made a careful and detailed analysis of all of the material facts which he found for the defendant. Although the appellant makes numerous assignments of error, yet in the main the real questions involved on this appeal are questions of fact and the legal force and effect of the instrument which purports to have been executed by the plaintiff on November 23, 1910, by and through E. Michael, as his agent and attorney-in-fact, in and by which, for a consideration of P226, Michael undertook to convey all of the right, title and interest of the plaintiff in and to about 6,723 square meters of a part of lot No. 522, 2,042 square meters of lot No. 528, and 4,030 square meters of lot No. 541, which were expropriated within the provincial park.

The record is conclusive that the P226 was paid to the plaintiff at the time of this alleged conveyance, and that he received and accepted the money and that the defendant relying thereon entered in, and upon, and took possession of, the land in question, and made permanent improvements thereon, and claimed to be its owner, and that in truth and in fact, the plaintiff never questioned the right or title of the defendant until these actions were brought on December 5, 1925. If it be true, as plaintiff now contends, that Michael had no authority to execute the instrument in question, he ought not to have accepted and receipted for its consideration, and having done so, he could not wait for fifteen years to rescind and set it aside upon the ground of fraud. The actions of the defendant after the instrument was executed in taking possession of the land and making improvements thereon were open and notorious and were a matter of common knowledge and were known or legally should have been known to the plaintiff.

Plaintiff having receipted for and accepted the consideration for the instrument executed November 23, 1910, and the defendant having relied thereon and having entered upon and taken possession and made valuable improvements on the land, we are clearly of the opinion that he cannot, fifteen years later, maintain an action to set aside that instrument upon the ground of fraud and deceit in its execution.

The lands in question are now a portion of what is known as the Osmeña Park in the City of Cebu, and the plaintiff undertook to justify his neglect and delay upon the ground that he was not previously in a position to cope with such a powerful influence. That position is not tenable or even plausible, and does not in the least justify plaintiff for his delay and neglect to assert his legal right, if any, he had.

Assuming, as he now contends, that at one time the plaintiff may have had some legal rights, he could not sleep upon them for fifteen years, during all of which time the defendant relied in good faith on the instrument executed by his agent on November 23, 1910, and had made valuable improvements on the lands in question, and then obtain legal relief from his own delay and neglect. Those legal principles apply with equal force and effect to the facts in both cases.

With all due respects to the able and vigorous brief for the appellant and the numerous assignments of error, the main questions involved on this appeal are founded upon questions of fact, all of which were found by the trial court in favor of the defendant, and there is ample evidence to sustain its findings.

The judgment of the lower court is affirmed in both cases, with costs on the appeal. So ordered.

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

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