

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. ESTEBAN DEL ROSARIO AND NATIVIDAD TIANGCO, DEFENDANTS AND APPELLEES.*G.R. No. 30874. December 26, 1929*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Nueva Ecija on behalf of the Government of the Philippine Islands, represented by the Attorney-General, for the purpose of compelling the defendants, Esteban del Rosario and wife, Natividad Tiangco, to convey to the Government a portion of lot 1442 of the Cabanatuan cadastral, of which it is alleged the defendants wrongfully hold the title. Upon hearing the cause the trial court at first dismissed the case, upon motion of the defendants, in an order of June 17, 1927, without pronouncement as to costs; but later, also upon motion of the defendants, the case was reopened in order that the defendants might have an opportunity to submit proof to sustain their defense, and later, upon September 18, 1928, the trial court again dismissed the case definitively, without costs. From this order the Attorney-General appealed.

It appears that Father Gregorio Crisostomo, now deceased, was, prior to his death on February 16, 1918, the parish priest of Cabanatuan, Nueva Ecija. In the year 1912, he leased to Esteban del Rosario, the principal defendant herein, a parcel of property in the municipality of Cabanatuan having the following boundaries: On the north by Burgos Street, on the south by palay land belonging to Father Gregorio Crisostomo, on the east by a lot (solar) of Francisco de Guzman, and on the west by a lot (solar) of Gabino Escudero; having an area of 1,435.10 square meters, and having a frontage of 41 meters and 60 centimeters and a depth of 35 meters and 50 centimeters (Exhibit B). On December 4, 1914, Father Crisostomo executed an absolute deed conveying the same property to the spouses Esteban del Rosario and Natividad Tiangco for the consideration of P250. The description of the property as given in this conveyance differs from the description given in the lease only in the circumstance that two of the contiguous lots had now passed into other hands; and while the lot was described as containing 1,435 square meters, the fractional centimeters in the two dimensions were omitted. There can therefore be no question that the lease and the later deed cover the same property, with a frontage of approximately 41 meters and a depth of 35 meters. It will be noted that the descriptions both in the lease and in the deed show that the property which was the subject of those transactions is bounded on the south by property of the grantor, and the location of the boundary line on this side is determined only by the depth of the lot in meters, stated at 35 meters and 50 centimeters in the lease and at 35 meters in the deed.

In 1914 or 1915 a cadastral survey was effected of the property in this locality, as a step preparatory to the initiation by the Government of registration proceedings under the cadastral law. In view of the institution of these proceedings, and in view of the circumstance that some other person was claiming some of the land adversely to Father Crisostomo, an understanding was reached between the latter and Del Rosario that Father Crisostomo would attend to the registration of the property, which would be effected in his own name, and that he, as soon as the title was settled, would cause the certificate covering the property sold to Del Rosario to be issued in the name

of the latter. In accordance with this understanding Del Rosario gave no personal attention to the registration proceedings until some months after the death of Father Crisostomo, which occurred on February 16, 1918, when Del Rosario ascertained that the land which had been sold to him was included in lots Nos. 1442 and 1443, both of which had been adjudicated to Father Crisostomo. Lot No. 1443 is unimportant in this discussion, as it consists only of a strip, a few feet wide, projecting into Burgos Street on the northern end of the property covered by Del Rosario's deed. Lot No. 1442, on the other hand, was so plotted as to include not only the major part of the lot purchased by Del Rosario but the land lying immediately south of the lot and extending to Angel Melencio Street, comprising a total area of 4,453 square meters, with a depth of about 100 meters. Having discovered that lot 1442 had been already adjudicated to Father Crisostomo, Del Rosario, on September 21, 1918, filed a motion in the registration proceeding stating that said lot had been conveyed to him by Father Crisostomo prior to the latter's death and asking that the certificate of title to lot 1442 be issued in Del Rosario's name.

It should be here stated that on the day before his death Father Crisostomo executed a last will and testament whereby he devised all his properties located in the Province of Nueva Ecija to the Government for charitable purposes, such as the establishment of hospitals, orphanages, maternity houses, or other similar undertakings, for the benefit of the Filipino people (Exhibit E). The will which effected this gift to the Government of the Philippine Islands was probated over the opposition of his heirs and the Government thereby became entitled to all properties located in Nueva Ecija that had belonged to the testator at the time of his death. It results also that the Government thereby became the party chiefly interested in opposing Del Rosario's motion. When the motion above mentioned was heard, an attorney from the Attorney-General's office was present; and, after examining the deed executed by Father Crisostomo and assuring himself of its authenticity, said attorney announced that he would not oppose the motion. The court thereupon acceded to the motion, upon the proof submitted by Del Rosario, and ordered that lot No. 1442 should be registered in the name of Del Rosario and wife. This was on November 2, 1918, and the certificate of title was thereafter issued in due course.

From what has been stated it is at once clear that mistake was made in awarding to Del Rosario all of lot 1442, since he was entitled only to a portion of said lot having a depth of 35 feet, while the lot awarded has a depth of 100 feet.

Accordingly, after this error had been discovered, the Attorney-Generals office, in a motion of December 3, 1923, asked that the certificate of title (No. 1370), covering lot 1442 and issued in the name of Del Rosario, should be amended so as to include Only the northern part of said lot, and limited to the area called for in Del Rosario's deed. In this motion it was alleged that the whole lot No. 1442 had been awarded to Del Rosario by mistake, and the basis of the motion was "clerical error" Upon the trial of that motion all parties in interest were represented, and the motion was denied.

It will be noted that no attempt was made by the Government to appeal either from the previous order of the court awarding lot No. 1442 to Del Rosario or from the order denying the motion to correct the certificate. But later the Attorney-General's office attempted to get the order set aside in a petition filed in the Supreme Court for a writ of certiorari (Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija, 49 Phil., 433). The latter proceeding however, failed on the ground that the court had jurisdiction to make the order which was the subject of the petition. In disposing of that case the court observed that the remedy would seem to be by an action to compel the conveyance to the Government of the portion of the land wrongfully held by the respondent; and the present action was instituted pursuant to that suggestion.

Although by the decree of the court in the registration proceeding, made upon the motion of the respondent Del Rosario, the latter acquired title to more land than he was really entitled to, in view of the description contained in his deed, it is not so certain that he thus acquired more than Father Crisostomo intended for him to have, and it is

but fair to state that, at the trial of the present action, Del Rosario proved by two witnesses that, at about the time when the cadastral survey was effected, Father Crisostomo told them that the land now in question had been sold to Del Rosario. This fact, however, is not, in our view, really determinative of the case. The point which, in the opinion of the court, determines this case is that the order of adjudication was made in course of litigation where all parties in interest were represented before the court, and no appeal was taken by the Government from the order awarding the property to Del Rosario. In a contest openly conducted between two claimants, it cannot be said that a title has been obtained by fraud merely because a judicial mistake was made in the decision of the controverted matter, nor because the claimant in that proceeding asked for more than his deed covered. In the nature of things there must be an end of a legal controversy, and the interest of the State requires that there should be. *Interest rei publicæ ut finis sit litium*. We are of the opinion that the controversy over the title to the questioned property must be considered as concluded by the unappealed orders above referred to; and this action to compel the defendant Del Rosario to surrender part of the property which was conceded to him in the motion referred to is not maintainable. In section 38 of Act No. 496 the law recognizes two forms of redress for the illegal registration of land, namely, the proceeding to open the decree within one year and an action for damages in certain cases. But the year allowed for opening the decree has long passed, and the action for damages is admittedly barred by prescription. The present action proceeds along another line, its purpose being to compel the holder of property, under Torrens title, to surrender the same on the ground that it was unjustly acquired. There may possibly be circumstances where such an action would lie, but it is difficult to see how this theory can be applied to a case where the adversary party was present in court with full opportunity to oppose the adjudication. It will be noted that there was no trust relation existing between Del Rosario and the Government in this case, and the situation is not one that would permit of the application of the doctrine of *Severino vs. Severino* (44 Phil., 343), where an uncle, occupying a trust relation to his niece, was required to surrender land to which he had improperly acquired a Torrens title.

In the Government's third assignment of error exception is taken to the action of the trial court in opening the case to admit proof which the defendant desired to introduce, after the case had been dismissed on the motion of the defendants. We are of the opinion that the step complained of was within the power of the court and constituted no abuse of discretion.

The judgment appealed from will be affirmed, and it is so ordered, without costs.

Avanceña, C. J., Johnson, Villamor, and Romualdez, JJ., concur.

Malcolm, Ostrand, and Johns, JJ., dissent.

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