

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
JULIA ORTIZ LUIS, DEFENDANT AND APPELLEE.***G.R. No. 31035. October 12, 1929*

Ponente: JOHNS, J.

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In 1910 Narciso Pascua, from whom plaintiff claims and derails title, filed an application for the land in dispute as a homestead, which was accepted by the Director of Lands. After such filing and before final proof, Leon Zarate and Juan Berenguer applied for the registration of 168 hectares of land in the Court of First Instance of Nueva Ecija, which included the homestead of Pascua, who with the Director of Lands, represented by the Attorney-General, appeared and contested the land registration proceedings of Zarate and Berenguer. On December 28, 1914, and after a hearing, the court ordered the registration of the land in favor of Zarate and Berenguer, and dismissed the oppositions of Narciso Pascua and the Director of Lands. On appeal that judgment was affirmed by this court March 13, 1918,[1] Notwithstanding that proceeding and those decisions, on August 20, 1918, the Director of Lands issued a homestead patent to Narciso Pascua for the land in dispute. February 2, 1919, Narciso Pascua sold the land to Severo J. Romero, a public land inspector and employee of the Bureau of Lands, who in the same month and year, and for an expressed consideration of P2,000, mortgaged the land to the plaintiff for P1,200, which foreclosed the mortgage and acquired title to the property, through a sheriff's sale.

The question is thus squarely presented whether or not the homestead patent issued to Pascua, known in the record as plaintiff's Exhibit A, through which plaintiff claims title, is prior and superior to the Torrens title of the defendant, known in the record as Exhibit 1. At the time the homestead patent was issued on August 20, 1918, the land therein described was previously declared to be private land, not only by the Court of First Instance, but also by this court.

As the appellee points out, proceedings for the acquisition of a homestead patent are not in rem, but a land registration case is and is directed against any and all persons, "including the Government of the Philippine Islands and any of its dependencies."

It also appears in the homestead patent issued to Pascua that the title is "subject to any and all vested and accrued rights."

The legal question involved on this appeal is squarely decided against the plaintiff in the case of *De los Reyes vs. Razon* (38 Phil., 480). In a well written, exhaustive opinion, this court says:

"1. HOMESTEADS; PATENTS.—A homestead patent which attempts to convey land to which the Government had no title at the time of its issuance vests no title in the patentee as against the real owner.

"2. ID.; ID.,-REGISTRATION OF PATENT; CONCLUSIVENESS OF CERTIFICATE OF TITLE.—A certificate of title issued to the grantee of a homestead patent pursuant to the provisions of section 122 of the Land Registration Act is not conclusive proof of title and confers no better right than that conferred by the patent."

The legal principles laid down in that decision have been approved and followed ever since. That is to say, in the land registration case, both Pascua and the Government appeared and presented their proofs and contested the application of the defendant's grantors for the registration of the land, and after hearing the evidence of all parties, the court decided that the land in question was private land, and that it should be registered in the name of the applicants as such, and that it was not public land, and denied Pascua's right to his homestead. That decision became final, and on appeal was affirmed by this court.

Hence, you have a legal adjudication, in which all parties appeared and filed their respective claims, that Pascua's homestead filing was null and void, for the simple reason that it was then private and not public land.

In the final analysis, the legal effect of plaintiff's claim is to nullify that final decision and to again relitigate the identical question which was decided in the land registration case.

There is no merit in the appeal. The judgment of the lower court is affirmed, with costs. So ordered.

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

[1] Zarate vs. Director of Lands, G. E. No. 11047, not reported. vs. Razon (38 Phil., 480).

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