GREGORIA YAMBAO ET AL., APPLICANTS AND APPELLANTS, VS. PIO TOLENTINO ET AL., OPPONENTS AND APPELLEES.

G. R No. 31087. January 25, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This is an application for the registration of land described in Exhibit B and indicated on plan Exhibit A. The applicants Gregoria Yambao and her children claim that one-half of the five parcels of land belongs to them; the applicants Josefa and Vicenta Nabong, that two-fifths of the other half is theirs; the applicant Gabino de Jesus claims another two-fifths; and the applicants Domingo Fajardo and brothers the remaining one-f-fifth of the said half of the five lots in litigation.

This application was opposed by forty persons, who allege that they are owners in fee simple of the respective portions claimed, described in detail as within the five parcels solicited, and that they and their predecessors in interest have been in possession of their respective portions as owners openly, peacefully, and adversely against the whole world, for over thirty years. The municipality of Calumpit, Bulacan, also filed an opposition to parcel A-1 of the plan Exhibit A, upon which is situated the barrio schoolhouse, which parcel has been excluded from the application upon motion of the applicants.

After the publications provided for by law had been made, and evidence adduced by all parties concerned, the court below, upon carefully analyzing said evidence, rendered judgment upholding the contention of the opponents that each and every one of them is the owner of his respective parcel, and for this reason found no merit in the application and denied its registration.

From this judgment the applicants appealed, after having duly excepted and filed a motion for a new trial which was also denied by the court below. In their brief, they assign the following errors as committed by the trial court: (a) In not giving due weight to the applicants' evidence; (b) in holding that the applicants have failed to prove that they have a conclusive right to the lands described in the application; (c) in finding that each and every one of the opponents have held in fee simple the respective portions claimed in their opposition; (d) in finding that the lands in question have been declared for the payment of the land tax by each and every one of the opponents now in possession of the portions claimed by them herein; (e) in admitting evidence upon lot 1-a, which had been excluded from the application; (f) in holding, in view of the evidence adduced by all parties, that there was a preponderance in favor of the opponents; and (g) in denying the registration applied for by the applicants, and in sustaining the opponents' opposition.

Two questions are raised in this appeal; one of fact, and the other of law.

Upon the question of fact, the trial court held that the preponderance of the evidence was in favor of the opponents. It is a well-known doctrine that in this jurisdiction the findings of fact made in the judgment appealed from are not disturbed by this court, unless it be shown that the court below has overlooked or misconstrued certain facts which would otherwise change the result of the decision. And this is what happened in the case at

bar, for we have found certain important facts which have escaped the attention of the court below.

Among the evidence presented by the applicants to prove their title are Exhibits E, I, J, K, L, and M, dated, the first in 1888, the next three in 1904, the fifth in 1914, and the sixth in 1886, signed in order by Damaso Adriano, Agustin Adriano, Tomas Parole, Agustin Adriano, Julian Manuel, and Damaso Adriano. The signers of these documents testify that each of them planted bamboo trees on the land belonging to Laureano de Jesus and Melchor Fajardo on the condition that they would be entitled to the first crop, and that by virtue of these documents each of them sold said first crop to the very owners of the land for the price mentioned in said documents. This documentary evidence forms a part of the record and was not considered by the trial court in its decision. If it is taken into consideration that Agustin Adriano, who signed Exhibits I and K, is one of the opponents, and that the rest of the signers, according to the appellants, must be relatives or predecessors of the other opponents, it will be seen that this evidence tends to strengthen the title of the applicants shown by Exhibits C, D, and N, copied in full in the judgment appealed from.

Exhibit C is a deed of title, authorized by the Juez mayor de policia (chief of police) on August 6, 1856, to bamboo land and mango trees in the barrio of Malindig, within the boundaries of Calumpit, held by Jacinto Sablan Lapira, with metes and bounds set forth in the document. By this instrument, Buenaventura Sablan Lapira sold the land subject to repurchase, to the spouses Martin Pineda, and Quintina Octavo de la Cruz for 75 pesos and 2 reales, thereupon conveying to the purchasers the possession and management of the said bamboo land and mango trees.

Exhibit D is & deed of transfer and conveyance of bamboo grove and mango trees, made in 1874 by Martin Pineda to Melchor Fajardo and Laureano de Jesus, who purchased said bamboo land and mango trees with pacto de retro for 402 pesos, and 2 reales.

Exhibit N is a copy taken from the statistics of the agricultural lands belonging to private individuals in the town of Calumpit, Province of Bulacan, in 1897, duly certified by the chief of the bureau of archives, wherein it appears that Melchor Fajardo was the owner of 11 hectares, 2 ares, and 2 centares of bamboo land in the barrio of Maisulao, Calumpit town, Province of Bulacan.

It appears further from the evidence of the applicants that in 1917, Gregoria Yambao, widow of Laureano de Jesus, sold some bamboo trees to Roman Aguilar, and that in the cutting of the cane, the latter employed several cutters, among them Celestino and Eulalio surnamed Garcia, Crispulo or Telesforo Valderama, Pedro Talavera, Carpio Tolentino, Estanislao Manuel and others, who were residents and lived in the houses built on the land. Aguilar's testimony has not been contradicted by evidence to the contrary, and it seems to us doubtful that the persons employed by him in the cutting of the bamboo would have offered to do that work if they really claimed to be the owners of said land.

As to the possession of the land, the parties maintain diametrically opposed contentions. But the applicants presented parol evidence to show that every year they picked the mangoes, and that every six or seven years they cut the ripe bamboo, selling it to the trade. This was done by Laureano de Jesus and Melchor Fajardo during their life-time, and after their death by their heirs, the applicants herein. The latter, before the insurrection against Spain, sold bamboo to one Catalino Reyes for the sum of P1,400; on another occasion to the cabeza de barangay Tomas de Leon and to Agustin Pineda for P1,300; and again in 1917 to one Roman Aguilar of Hagonoy for P1,300.

It was in 1918 that the applicants' possession was openly disturbed by the opponents, for which reason the former in that year instituted criminal proceedings for usurpation against the opponents herein for having cut 2,000 bamboo trees planted on the land. The case was dismissed on petition of the prosecuting attorney by an order

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dated August 29,1918, on the ground that it should have been prosecuted civilly.

In January, 1919, the applicants filed a civil complaint against the same opponents for the ownership and possession of said lands. In that case a preliminary injunction was issued against the defendants, who, in spite of said order, continued to disturb the plaintiffs' possession, and the latter had to ask for their punishment for contempt. On arriving at this stage, it was impossible to determine individually which of the defendants had disobeyed the injunction, for which reason the plaintiffs were compelled to move for the dismissal of the case in order that they might institute registration proceedings for the lands in question.

As to the payment of the land tax on the land in question, applicants and opponents contend differently. The applicants presented Exhibits G and H, which are the receipts for the payment of the assessment tax for the years 1908, 1919, 1923, and 1928. On the other hand, the opponent Pio Tolentino also presented the receipts for the payment of the tax, Exhibit 4, for the years 1918 to 1928, while the other opponents Juan de la Cruz, Jacinto Rodriguez, Marcelo Tolentino, and Inocencio A. Cruz only presented tax declarations on the parcels in their possession, made in 1906.

As to the number of houses of the opponents built on the land, there is also divergence between the parties, but we deem the number of houses to be of little importance, for, whether there be many or few, it appears that they have been built with the permission of the first owners, Laureano de Jesus and Melchor Fajardo, in order that they might be able to continue planting bamboo trees subject to the conditions above set forth. And, furthermore, several persons built their houses there with the permission of Gregoria Yambao, on account of the revolution.

After examining the record, and taking into account the evidence adduced by the applicants, both parol and documentary, as well as that adduced by the opponents, as described in the judgment appealed from, we are of opinion that the preponderance of the evidence is decidedly in favor of the applicants; and we are likewise of opinion that the adverse possession claimed by the opponents began, at the very earliest, in 1918. But in view of the institution of the two causes, civil and criminal, in 1918 and 1919 against the opponents, and on the supposition that the application in the instant case was presented in October, 1921, it is clear that the opponents have not been in possession of the lands they occupy long enough to acquire them by prescription. Wherefore, the judgment appealed from is reversed, and it is held that the applicants have by their evidence proved themselves to be owners pro indiviso of the lands applied for herein, and with sufficient title to demand the registration of the five parcels described in Exhibits A and B, and it is decreed that they be registered in the name of the applicants as follows: One-half of the five parcels in the name of Gregoria Yambao and her children; two-fifths of the other half in the name of Josef a and Vicenta Nabong another two-fifths in the name of Gabino de Jesus; and the last fifth in the name of Domingo Fajardo and brothers. Without special pronouncement of costs. So ordered.

Johnson, Street, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

Malcolm, J., dissents.

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