

**SEVERO DOMINGO ET AL., PLAINTIFFS AND APPELLANTS, VS.
SANTOS, ONGSIAKO, LIM Y CIA., AND TIBURCIO VERZOLA ET AL.,
DEFENDANTS AND APPELLEES.***G.R. No. 32776. December 04, 1930*

Ponente: STREET, J.

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This action was instituted on January 10, 1929, in the Court of First Instance of the Province of Nueva Ecija. The plaintiffs are Severo Domingo and about one hundred and seventeen others. The defendants are Santos, Ongsiako, Lim and Co., a corporation organized under the laws of the Philippine Islands, and several individual defendants who apparently have no personal interest in the controversy. The main purpose of the action is to recover from the corporation mentioned a parcel of land containing an area of about 1,006 hectares, located in the municipality of Nampicuan, Province of Nueva Ecija. Incidentally the plaintiffs seek to recover damages in the amount of P20,000 and to obtain an order requiring one Ignacio Yangco, as receiver, to pay to them the sum of P60,000 alleged to be the value of palay harvested from the land, with other incidental relief. The complaint having been answered by the defendants, the cause was heard and judgment was entered dismissing the complaint, with costs against the plaintiffs. From this judgment the plaintiffs appealed.

The land which is the subject of this action forms a part of a large tract situated in the provinces of Pangasinan, Tarlac and Nueva Ecija, known as the Hacienda Esperanza. This property was purchased from the Spanish government nearly eighty years ago, and after various transfers it was, in the last decade of the nineteenth century, divided between its owners, Francisco Gonzales and Marcelino de Santos, the latter receiving the northeastern portion of the hacienda, the greater part of which is located in the Province of Nueva Ecija. After the first partition was effected the agreement was modified by increasing the portion of Marcelino de Santos, owing to the fact that the land first awarded to him was of less value than what had been given to Gonzales. In course of time the property thus divided was brought under the operation of the Torrens system of registration, the portion assigned to Marcelino de Santos having been surveyed for registration in 1906. At that time surveys were carelessly made and errors in the computation of areas were not infrequent. The survey of the land of Marcelino de Santos in 1906 was made with magnetic orientation and suffered from numerous errors. After some amendments of the plan of survey had been made, and after the Tarlac section of the land had been excluded, the portion located in Nueva Ecija was registered in 1910, in accordance with said amended plan. The area thus adjudicated to Marcelino de Santos was supposed to contain something over 10,118 hectares. It is significant that none of the present plaintiffs made opposition either to the survey of 1906 or to the registration of the land in 1910. It is also noteworthy that, during the eight years covered by the making of subsequent surveys, none of the

herein plaintiffs presented claim to any part of the land now in controversy, and that no oppositions were offered from any source. As a result, however, of the subsequent surveys it was found that the area embraced in the plan of the survey of 1906 was understated to the extent of over 2,000 hectares; and this fact apparently had the effect of inciting in the minds of some a hope that a large tract contained in the boundaries of the land adjudged to Marcelino de Santos could be lopped off.

Turning to the plan of 1906, upon which the decree of registration of 1910 was based, we observe that while some of the distances given are inaccurate and the computation of the area grossly erroneous, nevertheless,—and this is most material here,—the boundaries of the southern part of the Marcelino de Santos land, as shown in the plan, are well defined and reliable; and it must be remembered that visible and well established boundaries control estimates of area or quantities (*Capellania de Tambobong vs. Cruz*, 9 Phil., 145; *Loyola vs. Bartolome*, 39 Phil., 54.4; *Escudero and Marasigan vs. Director of Lands*, 44 Phil., 83).

The southwest corner of the land included in the plan of 1906 is located at the point where the boundary line between Tarlac and Nueva Ecija crosses the river, or estero Susubaen. From that point the southern line of the land follows said river for a comparatively short distance to the old Hacienda Esperanza monument No. 6, very close to the irrigation dam built and owned by Francisco Gonzales. From that monument the line runs straight for 6,840 meters in an eastern direction to the old Hacienda Esperanza monument No. 5. The land adjoining that line to the south belongs to the descendants, or successors, of Francisco Gonzales and is conterminous with the Marcelino de Santos land now owned by Santos, Ongsiako, Lim & Co., the principal defendant in the present case, as the successor in interest of Marcelino de Santos.

Now, the capital question of fact in this case is, where is the land, which the plaintiffs are seeking to recover, located with reference to that southern boundary of the land registered in 1910 as the property of Marcelino de Santos? It is easy to demonstrate that this land, the subject of this lawsuit, is located north of that line; and this fact is fatal to the plaintiffs' case, for no revindictory action for the recovery of land can prevail against a Torrens title.

One of the documents in evidence in this case is the Exhibit 2, which is a plan taken from an official survey made in 1920-1923. This plan shows the part of the Hacienda Esperanza belonging to Santos, Ongsiako, Lim & Co., and it embraces the whole tract. The plaintiffs, on the other hand, have exhibited plan (Exhibit A) as surveyed in 1927 and certified as correct by the Bureau of Lands. The purpose of this latter exhibit is to show precisely where the land claimed by the plaintiffs is located. In a note on the face of this plan it is stated that the plan shows a portion of the larger tract surveyed for Marcelino de Santos. But the tract thus referred to is precisely the tract covered by the plan Exhibit 2. In other words the plaintiffs' own plan shows that this land is within the tract adjudicated in 1910 to Marcelino de Santos, the predecessor in interest of the defendant corporation. The fact does not escape us that the plan 2 is based upon a survey made in 1920-1923; but it is of the greater value for that reason, since it does not suffer from the defects of the old plan. The question with which we are here concerned is whether the questioned land is within the boundaries of the tract as located and monumented in 1910, and adjudicated to Marcelino de Santos.

A more detailed examination of plan A reveals the fact that the southwestern corner of the tract claimed by the plaintiffs is located at the point where the Tarlac-Nueva Ecija boundary crosses the Susubaen River, a point identical with the corresponding point in the old plan of 1906. From that point the southern line of plan A follows the boundary between the municipalities of Nampicuan and Guimba. This line runs a short distance north of the southern line of the Marcelino de Santos land as appearing in the original plan of 1906. The result is that the land shown in plan Exhibit A is bounded on all sides by land of Marcelino de Santos, though the greater part of this tract is of course to the north of the land claimed by the plaintiffs. The western end of the property in question

follows the Nueva Ecija-Tarlac boundary and consequently adjoins the land to the west of that boundary, all of which land several years ago was registered in favor of the defendants under the Torrens system.

What has been said above is in entire conformity with the description given of the questioned tract in the plaintiffs complaint wherein it is stated that said tract is bounded on the north by the land of Marcelino de Santos et al. claimed by Severo Domingo et al.; on the east by the land of Marcelino de Santos and Emilio Florendo; on the south by the land of Marcelino de Santos claimed by Aurea Gonzales, Guadalupe Gonzales, Felix Melegrito and Nicolas Niebre; on the west with the land of Marcelino de Santos claimed by Jacinto Paray and brothers. It may be noted that all of the land alleged to have been claimed by Jacinto Paray and brothers on the west and Aurea Gonzales, Guadalupe Gonzales, Felix Melegrito, and Nicolas Niebre on the south has long been registered in favor of Marcelino de Santos and his successors; and those alleged claimants have thus been completely excluded.

Now if the land in question is surrounded on all sides by the Marcelino de Santos land, and as it is obvious that the southern line of that land is included in the original plan, the inference is irresistible that all of the land within the limits of that plan must belong to the defendants unless it is shown that portions of the land have been excluded. Except a few small parcels in the poblacion of Nampicuan, donated to the town by Marcelino de Santos, there is no indication of any such exclusions.

We may say further that the final decree for the registration of the Marcelino de Santos land in Nueva Ecija is based on the survey of 1906 and was issued over twenty years ago. As to the southern line, it is stated in the decree that that line is bounded on the south by the properties of Joaquin, Matias, Manuel, Ernesto, Victoriano, Aurea, Cristina, Guadalupe and Romana Gonzales, and with the river Susubaen; and on the West with the property of the applicant (Marcelino de Santos). All of these properties have been registered under the Torrens system and in that entire section there is now not a square foot of unregistered land.

What more could be needed to demonstrate that the plaintiffs are trying to eject an owner from a part of a tract of land to which that owner holds a Torrens title? But if more is needed, reference can be had to the testimony of Victorino Floro, the surveyor who made the surveys on which the official plans Exhibits 2 and 3 are based, and who testified, with the plans before him, that the land claimed by the plaintiffs in Exhibit A is entirely contained within the boundaries shown on the plan 2.

The existence of this controversy has its explanation of course in the error which was made in the estimate of the area covered by the old Torrens title issued in 1910 to Marcelino de Santos. So long as that error was hidden, there was no trouble, but when the fact came to light that the Marcelino de Santos tract really contained more than 2,000 hectares in excess of the estimate shown in the title, it occurred to the persons promoting this litigation that it would be possible by invasion and occupation to restrict the area actually contained within the boundaries established by that title to the area stated therein; and the defendants' manager, Tiburcio Verzola, no doubt testified truly when he stated that the plaintiffs did not invade the land until June, 1926, when, under the leadership of Severo Domingo, they sought to drive away the tenants of the hacienda. It is true that the plaintiffs produced in this case two witnesses, namely Severo Domingo and Cornelio Fallorino, who declared that the plaintiffs have been in possession of the questioned land for some forty years. But, however boldly asserted, this statement cannot possibly be true. It is inexplicable that, supposing the plaintiffs had been in possession for the period claimed, not one of them can show a scrap of paper bearing on such alleged ownership and not one of the entire hundred and eighteen plaintiffs has ever paid a cent of taxes to the Government upon such land, or any part of it. The land in dispute is rice land, and it is under cultivation. It is not isolated or remote from other cultivated land. The provincial map of Nueva Ecija shows that it is only about three miles from the Manila North Road and only five miles from the poblacion or center of the town of Nampicuan. Under these circumstances it is not possible that all of these plaintiffs who claim to have been in possession of ten square kilometers of land for so

many years have escaped payment of land taxes.

In one of the briefs filed for the appellants an explanation is attempted of the supposed origin of the error in the estimate of the area of the land adjudicated in 1910 to Marcelino de Santos, and the root of the trouble is found in a supposed deviation from the description contained in the partition deed of 1893 between Francisco Gonzales and Marcelino de Santos, in the part which relates to the straight line starting from the point marked 5 (also A in red) in appellants' plan 1 and ending at a point close to the irrigation dam hereinabove referred to. This line has a course from point 5 of south 74 degrees west; while according to the plaintiffs' contention it should run 106 degrees north-west. The description in the old partition deed is apparently somewhat ambiguous, but what the argument comes to is merely this: that, in a partition deed executed in 1893, one of the coowners was favored more than the other. Clearly, such error, if made, concerned only the two persons between whom the property was being divided; and as neither Gonzales, who was the person prejudiced, nor his heirs or successors in interest, have complained, it is a matter about which we need have no concern. A stranger to a partition has no right to complain of an error made in dividing the property between the coowners.

In what has been said we have dealt with the decisive feature of the case so far as relates to the merits; and in so doing, we have passed over a circumstance of importance, to which attention will now be directed, namely, that in a prior litigation between the same parties over the same subject matter, judgment was rendered for the defendants in the Court of First Instance, and no appeal was taken therefrom by the plaintiffs. This judgment is relied upon by the defendants as *res adjudicata*.

In this connection it appears that on August 5, 1927, the present plaintiffs instituted an action in the Court of First Instance of Nueva Ecija, known as civil case No. 4597, for the purpose of recovering the same tract of land which is the subject of the present action. It is true that the description given in the complaint in said action differs in some respects from the description contained in the complaint in the present case, but the land intended is undeniably the same, and this fact is not controverted by the appellants.

In said civil case the defendants pleaded the general issue and presented a cross-complaint in which they alleged that they had always been in possession of the land claimed by the plaintiffs and have cultivated it through their tenants and croppers (*aparceros*). They therefore prayed that the plaintiffs in the action be permanently enjoined from usurping possession of the lands of Santos, Ongsiako, Lim & Co. and from harvesting palay there planted by the latter's tenants.

After various continuances granted upon request of the plaintiffs, the case was finally brought to trial on September 21, 1928. The plaintiffs' lawyer was present, but the plaintiffs themselves did not appear, and no evidence was introduced in their behalf. On the other hand, the defendants submitted proof in support of their cross-complaint; and after the cause was submitted, a decision was rendered by the court whereby the complaint was dismissed with costs against the plaintiffs, and judgment was given for the defendants (plaintiffs in the cross-complaint) to recover damages of the plaintiffs (defendants in the cross-complaint) in the amount of P1,000, with interest from the date on which the cross-complaint was filed until the amount should be completely paid. Furthermore, the court granted a perpetual injunction against the plaintiffs, their attorneys and agents, prohibiting them from usurping in the future the possession of the land and from harvesting and appropriating the rice planted thereon by the legitimate occupants, and from molesting their possession in the least, it having further declared unlawful for the plaintiffs to enter upon the land without the consent of the owners.

Upon the record showing that judgment in civil case No. 4597, the trial court in the case now before us held that the subject matter of this action had been concluded by the prior judgment, for which, reason the complaint was dismissed.

This decision was undoubtedly right. The dismissal of the complaint in case No. 4597 was a decision on the merits and conclusive against the plaintiffs' claim. A judgment rendered on the merits by a court of competent jurisdiction in any proceeding at law or in equity precludes and bars subsequent litigation between the same parties or their privies on the same cause of action.

The circumstances under which the dismissal of a case does not operate to bar a future action on the same subject matter and between the same parties are specified in section 127 of the Code of Civil Procedure; and the dismissal now under consideration did not exhibit the conditions therein mentioned. It is true that the decision in case No. 4597 recites that the attorney for the plaintiffs had voluntarily renounced any attempt to prove the allegations of the complaint, in view of the fact that the plaintiffs had not appeared. But this is not enough to deprive the decision of its conclusive effect. The defendants were there and the case was in fact tried upon its merits, upon the allegations of the cross-complaint, and judgment entered for the defendants thereon. In the case of *Estate of Yangco vs. De Asis* (22 Phil., 201), a judgment rendered in a former case was held to be conclusive although the case had actually been dismissed at the suggestion and request of the appellant's attorney. The rule there applied is applicable here.

What has been said relates to the effect to be attributed to the judgment dismissing the plaintiffs' complaint. A few words remain to be said upon the effect of the perpetual injunction which was issued in the same action upon the defendants' cross-complaint, prohibiting the plaintiffs from entering upon the land which was the subject of that action and molesting its occupants. Upon this point we note that the defendants alleged in their answer in case No. 4597 that the land which the plaintiffs were seeking to recover formed part of the land covered by a registered title held by the defendant corporation. This of course was a claim of ownership over the questioned property. In the decision granting the injunction it was declared by the court that all of the allegations of the cross-complaint had been proved and upon this finding the injunction mentioned was granted. That injunction necessarily had about the same effect as a decree of a court of equity quieting title; for a finding that the disputed land was covered by a Torrens title held by the principal defendant was equivalent to a finding of ownership in that defendant. Now a former judgment is conclusive upon any fact which serves as a necessary basis of decision, or (as it is put in section 307 of the Code of Civil Procedure) "which was actually and necessarily included therein or necessary thereto." In conformity with this idea it has been declared that a judgment in an action of trespass based upon the theory that the land described in the pleadings is within the boundaries of one of the parties is conclusive upon that question in any other action of trespass between the same persons (*Warwick vs. Underwood*, 75 Am. Dec. 767). Upon the facts stated it is difficult to see any sound reason why a conclusive effect should not be attributed to the decision in civil case No. 4597, in so far as it relates to the finding of the court that the property there in question was within the limits of the land covered by the Torrens title held by the defendant corporation.

Summing up the results of our examination of the record in the case before us, it is seen that the decisive fact, namely, whether the controverted land lies within the limits of the Torrens title held by the defendant corporation, must be determined against the plaintiffs, not only because the description of the land in the complaint in this case so indicates, and the official plan A relied upon by them proves it, but also because the point was necessarily involved in the adjudication made in a case from which no appeal was taken. The claim made by the plaintiffs that their land is outside of the Torrens title of the defendant corporation is therefore untenable. In this connection it will not escape notice that there is an inherent unnaturalness in the contention of the appellants, in this, namely, that a tract of land originally forming the Hacienda Esperanza was so divided between its two owners that a large area, belonging to neither, was left unclaimed along the line of division. This cannot be true. Of course, however, if either of the owners had permitted strangers to come in and occupy any portion of the land in the area referred to, such occupants might have acquired title by adverse possession. But this point was settled in the registration proceedings in which none of these plaintiffs appeared as opponents.

In conclusion the fact should not be overlooked that we are here confronted with what is really a collateral attack upon a Torrens title. The circumstance that the action was directly brought to recover a parcel of land does not alter the truth that the proceeding involves a collateral attack upon a Torrens title because, as we have found, the land in controversy lies within the boundaries determined by that, title. The Land Registration Law defines the methods under which a wrongful adjudication of title to land under the Torrens system may be corrected, and the bringing of a simple action to recover the land supposed to have been improperly included in the title is not one of the permissible remedies.

Wemay further observe that, underlying the contention of the plaintiffs is the idea that errors in the plans nullify the decrees of registration. This is erroneous. It is the land and not the plan which is registered. Prior to the enactment of Act No. 1875, practically all plans for land registration were defective especially in regard to, errors of closures and areas, but so far no such errors have been permitted to affect the validity of the decrees. If the boundaries of the land registered can be determined, the technical description in the certificate of title may be corrected without cancelling the decree. Such corrections have been made in this case by approved surveys which embrace all of the land here in question. To nullify and cancel final decrees merely by reason of faulty technical descriptions would lead to chaos.

Our review of the case leads us to the conclusion that the judgment appealed from was correct, and the same must be affirmed. So ordered, with costs against the appellants.

Malcolm, Ostrand, Johns and Villa-Real, JJ., concur.

DISSENTING

Romualdez, J.:

The decision appealed from, should, in my opinion, be reversed on the following grounds:

The plaintiffs claim a piece of land described in their plan, Exhibit A.

The defendants contend that the land claimed by the plaintiffs belongs to them as part of the Esperanza Estate (one-third), covered by the decree granting title to the land transferred to them through the proper certificate, No. 109, of which Exhibit 1 is a copy.

After hearing, the trial court found that the plaintiffs have been in possession of the land for at least twenty-five years, and that they were deprived of it by the defendants in the year 1927. This fact is sufficiently proven by the record.

The trial court also found that the land in question is not included in certificate of title No. 109, of which Exhibit 1 is a copy, and, for this reason, said exhibit was rejected as immaterial.

But the court below dismissed the complaint on the ground that the plaintiffs cannot now enforce their claim in view of the writ of perpetual injunction issued against them in the former case.

The plaintiffs appealed from the decision of the court below, making several assignments of error.

The important question to decide in this case is whether or not the land claimed by the plaintiffs, is within the limits of the Torrens title of which Exhibit 1, filed by the defendants in evidence, is a copy. If it is within said title, then the case must be decided in favor of the defendants, because even though the plaintiffs may have been in possession of said land for many years, such possession cannot avail them to prove prescription of ownership of a piece of land covered by a title obtained under the Land Registration Act, No. 496, section 46 whereof

contains provisions on the point.

But if the title which the defendants adduced as evidence does not include the land in question, even if that land, according to the prior documents of the defendants or their predecessors, is a part of the Esperanza Estate, judgment must be rendered in favor of the plaintiffs whose public, proprietary, continuous, peaceful, and adverse possession against the whole world has been established at the trial, and exercised by them over the land in question for twenty-five or more years until the year 1927; for such possession on the part of the plaintiffs constitutes prescription against the defendants, whose prior titles separated this property from the government domain, and hence, it was no longer public domain when the plaintiffs entered upon possession thereof, in spite of it having been a forest when they began to break the ground, as the record shows. Therefore, if the land formerly belonged to the defendants who acquired possession or title during the Spanish sovereignty, they lost it by prescription to the plaintiffs. The injunction issued in the former case cannot affect the plaintiffs herein to the prejudice of their right of action in the case at bar, because it was granted in the absence of the plaintiffs, without giving them their day in court, and does not exactly refer to the land in question, but only to the property of the defendants herein.

After the resolution of this court granting the parties an opportunity to forward the original record No. 5550 for the registration of land, in the course of which the certificate of title No. 109 was obtained by the defendants, the plaintiffs availed themselves of the opportunity afforded, and presented said original record accompanied by a memorandum and a plan certified by the Bureau of Lands.

An examination of said original record, and especially the plan and its modifications as compared with the decree rendered in those proceedings, shows that the southern boundary of the land decreed in said registration proceedings is the northern boundary of the land here in question, so that the latter is outside of the property adjudicated in said registration proceedings.

Undoubtedly this is the land which the defendants now seek to include in the title to be issued to them;, and they have had the plans Exhibits 2 and 3 drawn up to show an area noticeably greater than that covered by certificate of title No. 109. Upon this significant increase in area, the court below makes the following observation:

"Exhibits 2 and 3 at least show that the land claimed by the defendant increases from day to day, for although on December 4, 1916 it only contained an area of 10,118 hectares, 36 ares and 44 centares, from the year 1920 to 1923, when the measurements were made which are set forth in plans 2 and 3, this area has grown to some 15,000 hectares, which shows that in less than six years there has been an increase of over 5,000 hectares." (Page 16, Bill of Exceptions.)

I conclude, then, that the plaintiffs have shown that they have a better right to the ownership and possession of the land here in controversy.

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