

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT, VS. FAUSTINO ABAD ET AL., CLAIMANTS. THE DIRECTOR OF LANDS AND BRUNO PACHO, APPELLANTS.*G. R. No. 33598. September 08, 1931*

Ponente: STREET, J.

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In cadastral expediente No. 11, of the Province of La Union, G. L. R. O. Record No. 279, the lot No. 2476, consisting of 179 hectares, 66 ares and 14 centares, was claimed in its entirety by Bruno Pacho, while various portions thereof were severally claimed by Leon Valdez and fifteen other individuals, the latter being applicants for homesteads as to the portions respectively claimed by them. The Director of Lands, on behalf of the Government, also claimed the entire lot as public land, subject to the applications for homestead presented by the fifteen homestead claimants. Upon hearing the cause the trial judge disallowed the claims of Leon Valdez, Ambrosio Gacayan, Vicente Marzo 1.^o, Alejandro Lachica, and the heirs of Daniel Casison, and adjudicated to the spouses Bruno Pacho and Angela Colobong, as ganancial property, the portions of lot No. 2476 indicated in Exhibit 28 by the letters D, E, H, J, M, N, Q, and R. At the sametime he declared the portions indicated in Exhibit 28 by the letters A, B, C, F, G, I, K, L, O, P, S, T, U, V, and W to be public land subject to the applications of the respective homestead claimants of said lots, namely, Brigida Lubrin, Victoriano Ducusin, Jose Ducusin, Froilan Gacayan, Claudio Marzo, heirs of Vicente Marzo, 2.^o, Leopoldo Marzo, Regino Marquez, Hipolito Peralta, Simon Casison, Rufo Casison, Irineo Peralta, Baldomero Calub, Tomas Martinez and Saturnino Marzo.

From this judgment Bruno Pacho appealed with respect to the portions declared public land, while the Director of Lands appealed with respect to the parts adjudicated to Bruno Pacho and wife.

Upon examination of the proof in connection with the findings of the trial court and the assignments of error, we are of the opinion that the conclusions of fact reached by the trial court with respect to different portions of lot No. 2476 are correct, namely, that the claimant Bruno Pacho has been in possession of those portions of this lot which were adjudicated to him from a date prior to July 26, 1894, and extending to the date when Act No. 2874 of the Philippine Legislature went into effect. These portions of the lot were therefore correctly adjudicated to him in conformity with subsection (b) of section 45 of Act No. 2874. The appeal of the Attorney-General draws in question the conclusion of fact thus reached by the trial court as to the extent of Pacho's possession, but we are of the opinion that error therein has not been demonstrated.

With respect to those portions of lot 2476 which were adjudicated to the claimants who are attempting to acquire title by entry and possession under the homestead provisions of Act No. 2874, the trial court found that, although Bruno Pacho had once held possession of these parcels from a date prior to July 26, 1894, he had nevertheless lost possession of said parcels prior to the date (July 1, 1919) when Act No. 2874 became effective, and of course also prior to the date when the present cadastral proceeding was instituted (June 17, 1921). This simple statement of facts presents one of the points of law constituting the basis of the appeal of Bruno Pacho. To understand this

point it is necessary to note the difference between subsection 6 of section 54 of Act No. 926, as amended by section 1 of Act No. 1908, on the one hand, and subsection (b) of section 45 of Act No. 2874, on the other.

The two provisions read respectively as follows:

"Subsection 6 of section 54 of Act No. 926, as amended by section 1 of Act No. 1908.—All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said Act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the twenty-sixth day of July, nineteen hundred and four except when prevented by war or force majeure, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter."

"Subsection (b) of section U5 of Act No. 2874.—Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

It is important to note that claimants of agricultural public lands are presumed, under the provision first above quoted, to have performed all the conditions essential to a Government grant, when they shall have proved a continuous possession of such land "for a period of ten years next preceding the twenty-sixth day of July, nineteen hundred and four"; while under subsection (6) of section 45 of Act No. 2874, such presumption exists only in favor of an occupant whose possession has been continuous "since July twenty-sixth, eighteen hundred and ninety-four," that is, uninterrupted except for war or force majeure, and continuing at least until the date when Act No. 2874 became effective (*Ongsiaco vs. Magsilang*, 50 Phil., 380). It results that Bruno Pacho cannot obtain in this proceeding a confirmation of his title to those portions of lot 2476, of which he lost possession prior to the enactment of said law. The conclusion thus stated is challenged by the appellant Bruno Pacho on the ground of the alleged unconstitutionality of subsection (b) of section 45 of Act No. 2874, it being insisted that said provision, as thus interpreted, deprives him of property without due process of law, contrary to the first paragraph of section 3 of the Jones Law. In this connection it is asserted that inasmuch as this appellant had enjoyed possession of these parcels for a period of more than ten years prior to July 26, 1904, his right thereto became perfect upon the completion of said period, and it is not competent, so the argument runs, for the Legislature, by a later Act, to deprive him of this right and fix a longer period of possession as a condition precedent to the right to obtain a title.

The answer is that, under subsection 6 of section 54 of Act No. 926, the occupant of public land is merely given the privilege of applying for a certificate under the conditions stated in said provision, and the law does not declare that the occupant complying with those conditions shall thereby become the actual owner of the property possessed. In the case before us Bruno Pacho made no application for registration of the land which he had been occupying during the period when said provision was in effect. He only claimed the land after the provision above referred to had been abrogated. Subsection (b) of section 45 of Act No. 2874 is not obnoxious to the constitutional provision relied upon by the appellant, as depriving the appellant of property without due process of law. That provision has reference to property to which the citizen has acquired a vested right. It does not extend to privileges and inchoate rights which have never been asserted or perfected. The contention of the appellant Bruno Pacho to the effect that subsection (b) of section 45 of Act No. 2874 is unconstitutional, as applied to his alleged interest in the land awarded to the adversary claimants, is therefore without merit.

In order to avoid the effect of subsection (b) of section 45 of Act No. 2874, the attorneys for the appellant Bruno

Pacho bring forward the contention that Act No. 2874 relates only to lands of the public domain and that lot 2476 is land of private ownership. It is true that Act No. 2874 is concerned only with public land, and the rules laid down in that statute cannot affect land of private ownership. But, in the case before us, the appellant Pacho exhibits no title derived from the Government in the days of Spanish sovereignty, nor has he secured, with respect to the land here in controversy, a possessory information which might in course of time have ripened into a perfect title. His right to have the land in question registered in this proceeding depends solely upon proof of possession. It is true that this appellant exhibits the documents B, C, and D, as proof of title in himself. The first (Exhibit B) indicates that prior to June 7, 1875, Sotero Lachica sold a parcel of land to Maximo Pacho, father of Bruno Pacho, in exchange for a female carabao worth P10. This piece of land is apparently located in the northwestern part of the land contained in plan Exhibit A. The area of this parcel is not stated but must have been small, considering the trivial value placed upon the land. In 1877 Bruno Pacho succeeded his father in the ownership of this parcel. The second document (Exhibit C) shows that, on January 7, 1894, Bruno Pacho purchased a parcel of land from Buenaventura and Tomas de la Cruz. The consideration stated in this document is P130 paid to the vendors. The superficial area of the parcel is not stated in hectares, but the periphery is stated to be 980 brazas, and the shape of the property appears to have been that of a trapezium. The third document (Exhibit D) shows that, on or about March 15, 1890, for the sum of P240, Bruno Pacho purchased of Jacinto and Patricio Dacusin a parcel of land in the shape of a trapezium with a periphery of 2,750 brazas. The two parcels last mentioned are contiguous with each other and with the first lot acquired by Bruno Pacho from his father.

It will be noted that possession under Exhibit B dates from 1875, and prior possession in Sotero Lachica is shown from a period about ten years earlier. Possession beginning that far back and ending in 1912 covers a period of about forty-seven years, and continuous possession for such a length of time is sufficient to raise a presumption of a grant from the State. But the little piece of land covered by the Exhibit B is without doubt included in the property which the trial court ordered registered in the name of Bruno Pacho and his wife.

With respect to the other two documents (Exhibits C and D), it will be noted that the plaintiff acquired possession of the lots therein conveyed only in 1890 and 1894, while his possession, as to the properties adjudicated to the claimant-homesteaders, was terminated in the year 1912. The periods during which Bruno Pacho maintained possession of these parcels were therefore twenty-two and eighteen years respectively; and these periods are not sufficient to give rise to the presumption of a Government grant.

Further light is shed upon the character of Pacho's alleged possession of lots covered by the Exhibits C and D in the fact that in 1910 he declared for purposes of assessment only 15 hectares of land in this locality, not then claiming to be the owner of any larger area. In 1916 he declared 39 hectares and 80 ares for the same purposes; while in 1920 he declared 121 hectares, 53 ares and 2 centares. On the other hand the surveyed area of lot No. 2476 is, according to the surveyor Ambrosio Rodriguez, 179 hectares, 76 ares and 14 centares. We note also that in his declarations for purposes of taxation the properties successively declared are shown to have public land for an eastern boundary. These circumstances show that the boundary of the land claimed in this vicinity by the appellant Pacho has been extended eastwards to keep pace with his expanding capacity for absorption, and it is thus seen that the documents exhibited by him are not at all convincing as to his title, even supposing that his predecessors in interest had obtained title from the Government. As we have already observed, the Government is opposing his claim, and in such situation it is necessary for the claimant to show title from the Government or possession continued for a sufficient length of time to raise a presumption of a grant, but such duration of possession has not been shown, except with respect to the little piece of ground covered by Exhibit B, evidently included in the land which the trial court conceded to Pacho. It results that, as between the Government and this appellant, the land in question must be treated as public land; and the right of the appellant to procure the registration of those portions of lot 2476 which were declared public land must fail (*Ongsiaco vs. Magsilang*, 50

Phil., 380, 386).

What has been said disposes of the determinative features of the opposing appeals, and renders unnecessary a discussion of certain questions discussed in the voluminous briefs of the respective parties.

The conclusion to which we arrive is that the judgment appealed from is in all respects correct, and the same will be affirmed. So ordered, without pronouncement as to costs.

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

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