

LI SENG GIAP Y CIA., APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS ET AL., OPPOSITORS. THE DIRECTOR OF LANDS, APPELLANT.*G. R. No. 33652. February 24, 1931*

Ponente: STREET, J.

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This case involves cross appeals brought respectively by the applicant, Li Seng Giap y Cfa., on the one hand, and the Government of the Philippine Islands, represented by the Director of Lands, on the other, with respect to the disposition made of lot No. 4 in expedience No. 129, G. L. R. O. Record No. 31548, of the Court of First Instance of Camarines Norte, whereby said lot was adjudicated to the applicant with the exception of a part covered by a pier extending into Mercedes River, in the municipal limits of Daet, which portion was declared to be Government property. The case also involves an appeal of the same applicant, Li Seng Giap y Cia., whereby the said applicant seeks to reverse an order of the same court disallowing its application with respect to lot 8 in the same expediente, and declaring said property to be forest land and as such property of the Government.

To deal first with lot 8 with respect to which the applicant alone appeals, we note that this lot contains an area of more than 459 hectares. The proof shows that this property is virgin forest covered with trees and forest growth. Some of the trees upon it are from 200 to 300 years old, and it has never been reduced to cultivation, being more valuable for forest than agricultural purposes. In years past the Bureau of Forestry has been issuing permits to various persons to cut wood on this tract of land, and in particular, in 1925, Esteban Abo cut trees under such a permit on this property without being disturbed by any one.

The supposed right of the applicant is based upon a possessory information begun December 31, 1895, and approved October 15, 1896, in the name of Rufino Mabesa. It is evident that this document cannot have the effect conceded to a possessory information obtained within the period limited by the royal decree of February 13, 1894. No sufficient proof is made with respect to the possession of this parcel by the applicant or its predecessors in interest Inasmuch also as the property is forest land, it was not susceptible of private (appropriation under existing laws, nor was its inclusion in the old possessory document justified under the prior laws, which prohibited the alienation of forest lands. We note further that the tract in question is vastly larger than the land included in the possessory information relied upon. The trial court committed no error in denying the application for the registration of this lot in the name of the petitioner.

With respect to lot 4 both parties have appealed, but the appeal interposed in behalf of the applicant relates only to the area covered by the pier (pantalan) which the trial court excluded from registration, while the appeal of the Attorney-General, interposed in behalf of the Government, covers a respectable part of the lot 4. At the outset we note that the appealed decision states that the Government presented no proof in support of its opposition with respect to lot 4. This is a mistake, since the Government presented three witnesses whose testimony consists of thirty pages of the transcription, in addition to which the Government presented several exhibits. The oversight of

the trial judge in failing to take account of this proof deprives his finding of the weight to which it would ordinarily be entitled.

The applicant derails its title through several parties, namely, directly from Vicente Madrigal, who acquired the property from Urrutia y Cfa., who in turn purchased it from one Francisco Arana. To go no farther back than a deed from Madrigal to the applicant dated February 21, 1924, we note that Madrigal conveyed to the applicant a parcel of land 39.5 yards in length by 19 yards in breadth, that is to say, a total area of less than 600 square meters. The lot actually surveyed as lot 4 and claimed by the applicant contains 2,801 square meters, and although the description given in the deed describes a lot running out to the pier, it nevertheless clearly appears that said description includes land to which the vendor really had no title. In the first place, the property which was originally at the heart of this holding is the land covered by an old bodega, indicated in Exhibit 1, of the Director of Lands. Separating that lot from the lot now covered by plaintiff's new camarin is the heading of a street, formerly making part of the provincial road to Daet, but for a number of years past the road has been diverted from this head, apparently by the erosion of the river, so that the road now passes around the old bodega instead of running between the old bodega and the sea. But the land thus left out of the street has been taken care of by the municipality at public expense. Evidently this parcel was no part of the land belonging to the owner of the old bodega. The particular ground covered by the new camarin in immediate juxtaposition to the pier (pantalan) was years ago the site of a shed built of light materials. Access to the pier was had over this lot by the public over a narrow way, but since the building of the new camarin by the applicant, the path leading to the pier along the side of the new camarin is much restricted. Moreover, in building the new camarin the proof shows satisfactorily that there has been an encroachment of several meters on the waters of the Mercedes River, where the pier is built. This encroachment was effected by filling in with rubble and building the new camarin over the extension. From the proof it is clear that at high tide the waters from the sea came in and inundated part of the space now covered by the new camarin. It results that the applicant has proved title only to the site of the old bodega, conforming to the space covered by lot 2 in Exhibit 1 of the Director of Lands, and with respect to the other land now comprising lot 4 the applicant's title is not made out.

The judgment as to lot 4 will therefore be reversed and the order for the registration of lot 4 in the name of the applicant is vacated, with leave, however, to the petitioner to reform his plan, with the result of including therein the lot actually covered by the old bodega, and upon the submission of such plan, the court will allow the lot to be registered in the name of the applicant. As to lot 8 the judgment is affirmed. So ordered, with costs against Li Seng Giap y Cia.

Johnson, Villamor, Romualdez, and Villa-Real, JJ., concur.

JOHNS, J., with whom concurs MALCOLM, J., dissenting:

We dissent. The judgment of the lower court should be affirmed.

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