

MONSERRAT PALET ET AL., PETITIONERS AND APPELLEES, VS. GABRIEL TEJEDOR ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. 34048. March 10, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Gabriel Tejedor and others from the order of the Court of First Instance of Manila, dated May 22, 1930, in cadastral case No. 63, G. L. R. O. record No. 318, lot No. 2, block 379, the dispositive part of which reads as follows:

"Wherefore, said lot 2 of block 379 of cadastral case No. 318 is hereby adjudged and decreed to the petitioners Monserrat Palet, Dominga Palet, and Alvaro Oliver y Palet, the last-named as successor to Rosa Yedra.

"When this order becomes final in accordance with law, the Chief of the General Land Registration Office shall issue the proper decree."

In support of their appeal the appellants assign the following alleged errors as committed by the court below in said order:

- The lower court erred in holding that the petitioners have set forth a sufficient allegation of fraud.
- The lower court erred in holding—without any evidence—that the petitioners have proved the fraud imputed to the respondents.
- The lower court erred in ordering the review of the decree of registration corresponding to lot 2 of block 379 of the Manila cadastral survey.
- The lower court erred in holding that said lot belongs to the petitioners and not to the respondents, by virtue of the instrument of partition, Exhibit 1, of the agreed statement of facts.
- The lower court erred in cancelling the respondents' title to said lot, and in awarding the lot to the petitioners.
- The lower court erred in denying the motion for a new trial filed by the respondents."

The relevant facts necessary to decide the questions raised by this appeal are the following:

On August 21, 1929, the respondents Gabriel Tejedor and others filed a motion with the Court of First Instance of Manila in connection with cadastral case No. 63 of the Court of First Instance of Manila, G. L. R. O. record No. 318, praying, for the reasons given, that the court issue an order requiring the Chief of the General Land Registration Office to issue a decree with reference to lots Nos. 1 and 2 of block No. 379, G. L. R. O. record No. 318, in the City of Manila, in favor of Gabriel, Beatriz, Nuria, and Jorge Tejedor y Palet, for four equal parts pro indiviso, both lots subject to the life usufruct of Gabriel Tejedor.

After a hearing on said motion wherein no opposition was presented, the Court of First Instance of Manila, presided over by Judge Pedro Tuason, granted it by an order dated September 7, 1929.

On December 5, 1929, Monserrat Palet and others filed a motion praying that the order requiring the issuance of a decree given on September 7, 1929, be revised, and that the decree of adjudication dated October 8, 1929, be declared ineffective, and that the original title of ownership No. 7171 issued by the registrar of deeds of Manila in favor of Gabriel, Beatriz, Nuria, and Jorge Tejedor, subject to the right of usufruct in favor of Gabriel Tejedor y Carbo with respect to lot No. 2 of block 379 of the cadastral plan of the City of Manila, be declared null and void, because it was obtained through fraud.

After hearing on this motion for review, the Court of First Instance of Manila, over the opposition of the respondents, granted the same by an order dated February 3, 1930, providing:

"Wherefore, petition granted and the decree and certificate of title issued with regard to lot 2, block 379, in favor of the respondents are hereby set aside, and the registrar of deeds of the City of Manila shall cancel said certificate of title covering said lot. The motion filed by the respondents asking for the registration of said lot 2, block 379, in their name shall again be set for hearing.

"When this order becomes final by law, the registrar of deeds of the City of Manila shall proceed in accordance therewith."

Exception was taken to this order by the respondents, who filed a motion for new trial on February 12, 1930.

Before this motion for a new trial had been passed upon, the respondents withdrew it and agreed with the petitioners to submit the case to the court for decision upon the following agreed statement of facts;

"Come now the parties in the above-entitled action, through their undersigned counsel, and do hereby submit the following

"AGREED STATEMENT OF FACTS

- That Agustin Palet y Roca, married to Francisca Palet de Yedra, owned by right of purchase*two (2) adjoining parcels of land: One on A. Mabini (formerly Nueva) Street, and the other at the corner of this street and Herran, in the District of Malate, City of Manila, whereon are two buildings of strong material, one on A. Mabini (formerly Nueva) originally numbered 26, later 73, then 216, and lastly 678; and the other at the corner of A. Mabini (formerly Nueva) and Herran, numbered 75 at first, later on 228, and at present No. 694.

- That lot No. 678 comes from Roman Martinez Andueza, and lot No. 694 from Francisco de Paula Ossorio y Cembrano, as shown by Exhibits A and B, with regard to the first lot, or No. 678; and by Exhibit C with respect to lot No. 694. The former lot has an area of 1,410.18, and the latter 738.16 square meters.

- That for the purpose of widening Nueva (now A. Mabini) and Herran Streets, on November 29, 1905, a strip of 186.10 square meters was taken from the first mentioned lot, and 164 square meters from the second, as shown by Exhibit D.

- That the building on the lot at the corner of A. Mabini (formerly Nueva) and Herran occupies 256.37 square meters, according to Exhibits E and I, and the lot, 738.16 square meters as stated above.

- That when the cadastral plan of case No. 63, G. L. R. O. record No. 378 of Manila was drawn, the lot at the corner of A. Mabini (formerly Nueva) and Herran was marked lot No. 1 of block No. 379; and the lot on A. Mabini (formerly Nueva), lot No. 2 of block No. 379. (Ex- hibit F.)

- That according to said cadastral plan (Exhibit F), lot No. 1 of block No. 379 contains an area of 562.20 square meters, bounded on the N. by lots 2 and 3 of block 379; on the E. by lot 3 of block 379; on the S. by Herran Street, and on the W. by A. Mabini Street; and lot No. 2 of block 379 contains an area of 1,347.20 square meters, bounded on the N. by lots 4 and 5 of block 379; on the E. by lot 3 of block 379; on the S. by lot 1 of block 379, and on the W. by A. Mabini Street.

- That by inheritance these lots passed to Rosa de Yedra and to Rosa, Monserrat, and Dominga, surnamed Palet y Palet; and they claimed them in cadastral case No. 63, G. L. R. O. record No. 318 of Manila, receiving them by judicial decree dated July 27, 1923.

- That after the death of Rosa de Yedra and Rosa Palet y Palet, an agreement was entered into by Jose Oliver y Bauza, as attorney-in-fact for Monserrat Palet, Dominga Palet and others, on the one hand, and Gabriel Tejedor y Carbo in his own behalf and as the legal representative of his children by the deceased Rosa Palet y Palet on the other; and notice of this agreement was given to Messrs. Fernandez Hermanos, by both Jose Oliver y Bauza and Gabriel Tejedor y Carbo, Fernandez Hermanos who represented the interests of Jose Oliver y Bauza and Gabriel Tejedor y Carbo in these Islands. (Exhibits G and H.)

- That later on,—February 6, 1926, to be exact, an agreement was reached and Exhibit I was executed.

- That this agreement, Exhibit I, was forwarded to Messrs. Fernandez Hermanos, who were, as stated, the representatives in these Islands of both the petitioners and the respondents, continuing to act in that capacity until the month of April, 1928.

- That in or about the month of May, 1928, Messrs. Fernandez Hermanos delivered said agreement, Exhibit I, to Mr. David Saborit y Viladiu, who had been appointed attorney-in-fact by the respondents for these Islands, and he was also placed in possession of the aforesaid house No. 694 on A. Mabini Street, for Messrs. Fernandez Hermanos informed said Mr. Saborit that that was the only property belonging to the respondents.

- That on March 31, 1928, Messrs. Fernandez Hermanos sent said Mr. Saborit, as attorney-in-fact of the respondents, a statement of the current account of said lot No. 694 A. Mabini Street, for the period from January 1, 1928 to March of the same year. (Exhibit J.)

- That making use of the aforesaid agreement (Exhibit I), the respondents in a motion dated August 21, 1929, prayed that lots Nos. 1 and 2 of block No. 379 of the cadastral plan of the City of Manila, be adjudicated to them. (Proceeding No. 63, G. L. R. O. record No. 318.)

- That the respondents neither gave notice nor served a copy of their motion of August 21, 1929 on the petitioners; although the court notified Messrs. Fernandez Hermanos, who were the representatives of the petitioners, of the hearing on said motion as appears from folio 2207 (reverse) of this record.

- That when said notice of the hearing was given, Mr. Jose Oliver y Bauza was already dead, his death having occurred in Spain on May 1, 1928, but Messrs. Fernandez Hermanos were at that time, and still are, the representatives of the petitioners in the Philippine Islands.

- That the court granted the respondents' motion of August 21, 1929, adjudicating to them by decree dated October 8, 1929, said lots Nos. 1 and 2 of block No. 379, and the original certificate No. 7171 was issued to them by the registrar of deeds of Manila.

- That Mr. Saborit learned only after the issuance of said original title No. 7171, that is, in or about the month of November, 1929, that lot No. 2 of block 379 had been adjudicated to his principals, and at once demanded that Fernandez Hermanos deliver to him said lot including the house thereon at 678 A. Mabini Street, and this demand gave rise to the motion for review filed by the petitioners on December 5, 1929.

"CONTENTION

"The parties expressly agree that there is no question as to the ownership of lot No. 1 of block No. 379 and the house No. 694 on said lot, which belong to the respondents.

"The petitioners contend that by virtue of Exhibit I, the lot adjudicated to the respondents is the one which Agustin Palet y Roca purchased of Francisco Paula Ossorio y Cembrano, thru a deed dated May 1, 1926, or that described in Exhibit C, and that this lot is that known as lot No. 1 of block No. 379 of the plan Exhibit F.

"The respondents, on the other hand, contend that by virtue of said Exhibit I, they acquired said lot No. 2 of block No. 379, which belongs to them exclusively, being a piece of real estate conveyed to them by means of said document.

"The parties agree to submit the case on the present stipulation and with the attached exhibits, with the right to file a memorandum at the same time within the period of five days from the date hereof.

"Manila, P. I, 13th of May, 1930."

The pertinent portion of the deed of partition and adjudication mentioned as Exhibit I in the agreed statement of facts is of the following tenor:

"EXECUTION

"In full and complete payment of his rights in the inheritance of Agustin Palet y Roca and Da. Francisca Palet de Yedra, the herein deponent Jose Oliver y Bauza, does hereby adjudicate to Gabriel Tejedor y Palet in undivided fourths the naked ownership of the following real estate:

"A house of two stories built of strong materials with a galvanized iron roof, with a total area of 994.53 square meters, of which the house and its appurtenances occupy 256.37 square meters; said house is situate in the City of Manila (Philippine Islands) at No. 694 A. Mabini Street, and comprises lot 1 of block No. 379 of cadastral proceeding No. 318 of said City of Manila, bounded on the north by lots Nos. 2 and 3 of said block; on the east by lot No. 3 thereof; on the south by Herran Street; and on the west by A. Mabini; and two of said block, bounded on the north by lots 4 and 5 thereof; on the east by lot 3; and on the south by lot 1; and on the west by A. Mabini Street.

"The house was purchased by D. Agustin Palet y Roca from Don Francisco de Paula Ossorio y Cembrano through the deed of May 1, 1896 executed before notary public D. Calixto Reyes of Manila, in substitution of his partner D. Abraham Garcia; and the deponents agree to evaluate it at one hundred eighteen thousand, one hundred twenty- four pesetas and sixty-two centavos.

"Said property is recorded in the registry of deeds of Manila on folio four (reverse), volume three of the Ayuntamiento of Manila, South Registry, Section of Malate No. 23, third inscription.

"By virtue of the foregoing, the undersigned, acting as aforesaid, does hereby divest himself and those whom he represents, of all joint ownership of said property, transmitting it in its entirety to the assignee, in the capacity mentioned heretofore, whom he empowers to take possession thereof, binding himself and his agents to warrant them according to law.

"D. Gabriel Tejedor, in his capacity above set forth, does hereby accept the adjudication, declaring himself and all his children and those whom he represents, fully paid and satisfied in the inheritance of D. Agustin Palet y Roca and Da. Francisca Palet de Yedra, ceding and transferring in favor of his coheirs, this coownership of the remainder of the estate of said inheritance, promising that neither he nor his children shall henceforth claim anything thereon."

If the house adjudicated to the respondents Gabriel Tejedor and others in the deed of partition and adjudication, Exhibit I, is the one purchased by Agustin Palet y Roca from Francisco de Paula Ossorio y Cembrano as evidenced by the deed executed on May 1, 1896, and if, according to the agreed statement of facts, said house is the one numbered 694 which, in the cadastral survey was numbered 1 of block 379, the respondents are only entitled to this lot by virtue of said deed of partition and adjudication, excluding lot No. 2 of said cadastral survey, which comprises the property numbered 678 and derived from Roman Martinez y Andueza, not adjudicated to them by said deed.

When, therefore, the respondents asked for the adjudication to them of lot No. 2, together with lot No. 1 of

cadastral case No. 63, G. L. R. O. record No. 318, knowing that they were only entitled to said lot No. 1, this being the only property adjudicated to them by the deed of partition and adjudication, Exhibit I, they acted in bad faith, and the year not having elapsed from the issuance of the decree of registration, which took place on October 8, 1929, until the filing of the motion for review on December 5, 1929, such review was proper on the ground of fraud, in accordance with the provisions of section 38 of Act No. 496.

Even if there had not been fraud in obtaining the decree with respect to lot No. 2, or the year had elapsed after the issuance of said decree, the petitioners would be entitled to recover of the respondents the ownership of said lot No. 2 by virtue of the said deed of partition and adjudication, Exhibit I, so long as the property remained registered in their name and no third person had acquired it in good faith for a valuable consideration. (Philippine Land Improvement Co. vs. Bias, p. 540, ante, and citations.)

In view of the foregoing considerations, we are of opinion and so hold: (1) That a co-owner of land who applies for and obtains the adjudication and registration in his name of a lot which he knows has not been allotted to him in the partition, acts in bad faith, and the decree issued may be reviewed within the year following such issuance, in accordance with section 38 of Act No. 496; and (2) that even in the absence of fraud in obtaining said decree, or after the lapse of one year after the issuance thereof to said co-owner, he may be compelled to convey said lot to whoever received it in the apportionment, so long as it remains registered in his name, and a third party has not acquired it in good faith for a valuable consideration.

Wherefore, finding no error in the order appealed from, the same is hereby affirmed in its entirety, with costs against the appellants. So ordered.

Avanceña, C J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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