

MAURICIA MOPERA AND GERTRUDIS HOPILHA PLAINTIFFS AND APPELLEES VS. PABLO CABANELA ET AL. DEFENDANTS AND APPELLANTS MONICO CABAHELA INTERVENOR AND APPELLANT.

G. R. No. 34264. December 05, 1931

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of Camarines Norte on July 25, 1928. Its purpose was to recover two parcels of land situated in the municipality of Daet, of said province.

The intervenor Monico Cabanela alleged that he was the owner of one of said parcels with an area of about thirty hectares, having acquired the same as homestead from the Government. The defendants Pablo and Laureano Cabanela alleged that they were in possession of the other parcel, as applicants for homestead. The Director of Lands in his answer alleged that the lands belonged to the public domain and that the plaintiffs' right therein, if any, had been lost by abandonment.

Upon the issue thus presented the cause was brought on for trial. After hearing the evidence the honorable A. M. Recto, judge, rendered a judgment in favor of the plaintiffs, declaring that they were the owners of the parcels of land in question, but that the defendants were entitled to recover the value of the improvements thereon, without pronouncement as to costs. The dispositive part of the decision reads as follows:

"POR LAS COUSIDERACIONES EXPUESTAS, el Juzgado declara que las dos porciones de terreno, descritas en la contestacion enmendada de los demandados de fecVia 18 de marzn de 1928 e indicadas como lote No. 1 y ' x' en el plano Exhibit 'C de las demandantes, son de la propiedad ds estas por hallarse coraprendidas dentro del titulo de informacion posesoria Exhibit 'D' expedido a favor de su causante, Ignacio Mopera, y que el tercerista Mcmico Cabanela y los demandados laureano y Pablo Cabanela, por haberlas sembrado de buena fe, tienen derecho a resarcirse del valor de sus siembras, en la forma arriba expuesta; sin expreso pronunciamiento en cuanto a las costas."

From that judgment the defendants appealed. Later the Director of Lands withdrew his appeal.

The appellants now contend that the lower court erred —

- In finding that exhibits A, B and D show that the parcels of land in question form part of the land described therein; and
- In not holding that the plaintiffs have lost their right in the land by abandonment in other words, that their right of action has prescribed.

An examination of exhibits A, B, and D fails to show that the lands therein referred to are the two parcels now in question, or that these two parcels form part of the lands mentioned in said exhibits. The boundaries of the lands therein described are different from the boundaries of the two parcels in question as given in Exhibit C. No satisfactory explanation was given for said difference.

Furthermore, Exhibit D, which the lower court erroneously Called possessory information title, is not such title. It is only an application for said title, filed with the Government by the father of the plaintiffs. However, no title was ever issued, evidently for applicant's failure to prosecute. At the bottom of the last page of said Exhibit D is a providencia, for the hearing of said application on a certain date, in the presence of the promotor fiscal; but no such hearing was held and no adjudication of title was made to the applicant.

The second contention, to wit, abandonment or prescription, is supported by the record. When Monico Cabanela applied for lot No. 1 as homestead in 1917, the encargado of the plaintiffs filed an opposition with the Director of Lands. Said opposition was denied in January, 1918, "but the plaintiffs took no further steps to assert their alleged right until the lapse of more than ten years, or on July 25, 1928, when this action was instituted. On the other hand, during that period of over ten years, Monaco remained in the peaceful, quiet, continuous and uninterrupted possession of said land as a homesteader.

A great preponderance of the evidence shows that the two parcels of land in question are public land, occupied by the appellants as homesteaders. Therefore, the judgment appealed from should be and is hereby reversed, and the appellants are hereby relieved from all liability under the complaint, with costs against the appellees. It is so ordered.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

Avanceña, C. J., Villamor, Ostrand, and Villa-Real, JJ., concur.

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