

BERNABE B. AQUINO, CLAIMANT AND APPELLANT, VS. THE MUNICIPALITY OF BAYAMBANG, DEFENDANT AND APPELLANT, THE GOVERNMENT OF THE PHILIPPINE ISLANDS, INTERVENOR AND APPELLEE.

G. R. No. 34336. December 31, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

These two cases were presented to this court, together with G.R. No. 34338,[1] by the writer of this opinion, owing to the fact that they are closely related.

Bernabe B. Aquino and the municipality of Bayambang, Pangasinan, both appeal from the decision rendered in these two cases which had been tried together.

The first of these, namely, G. R. No. 34336, was brought by Bernabe B. Aquino to recover some real property from said municipality of Bayambang, and the second was instituted for the purpose of registering said property under Act No. 496.

The appellants have each assigned a number of errors.

Bernabe B. Aquino contends that he purchased the property from Agustin V. Gomez as evidenced by the deed (Exhibit L-Aquino), registered in the registry of deeds. Agustin V. Gomez bought the said property together with some others, of Getulio Pitco (Exhibit K—1-Aquino) who had also purchased them from Juan Fajardo (Exhibit K—1-Aquino), who, in turn, had in the year 1892, obtained a possessory information. Several witnesses testified at the hearing that Juan Fajardo and his successors, had indeed been in possession of the property, cultivating it.

On the other hand, the municipality of Bayambang maintains that the lots here claimed are part of the fisheries it has owned from time immemorial.

Taking up first of all the claim presented by the municipality of Bayambang, appellant, we do not find sufficient evidence of record to show that said municipality was in possession of the property claimed previous to the year 1928. Neither has it been shown that the Insular Government duly transferred said property to it; and even assuming that it has been in possession thereof, this court has repeatedly held that the mere occupation and possession of land, and the collection of rent therefor, does not give the municipality any title thereto. (Municipality of Tacloban vs. Director of Lands, 17 Phil., 426; 18 Phil., 201; Municipality of Hagonoy vs. Roman Catholic Archbishop of Manila, 29 Phil., 320.)

We find no merit in the appellant municipality's assignment of error.

Passing now to the appellant Bernabe B. Aquino's claim, we find that there is sufficient evidence in the record to show that the property here in litigation is the same described as the second parcel in the possessory information (Exhibit K-Aquino).

We believe the road mentioned in said information as the northern boundary of the property, which today no longer exists, was sufficiently shown to have existed on the northern side of the whole property belonging to Juan Fajardo at that time, of which the land litigated in these two cases is a part.

The eastern and western boundaries are satisfactorily identified in the testimony of Marciano Fajardo, which is corroborated by Esteban Cajulao and Cosine Valdez; and as for the southern side of the second parcel mentioned in the possessory information, we find, in view of the evidence, that it today forms the boundary line between two municipalities, Bayambang and Moncada.

The value of the possessory information (Exhibit K-Aquino), as evidence of possession is not impaired by the fact that it was registered only in the year, 1920. To be sure, before being recorded in the registry it availed nothing against a third person; but when it was adduced in the present case, it had already been duly recorded.

Marciano Fajardo, it is charged, recognized that the property in question was part of the fisheries belonging to the municipality of Bayambang, inasmuch as it was he who, being the municipal president in 1911, furnished the data regarding that property at the instance of said municipality. But Marciano Fajardo has, in our opinion, explained the matter sufficiently. The 1911 survey was made not because the municipality claimed the property, but in order to fix the line between said municipality and those conterminous with it, which had been in controversy for a long time. With reference to the ordinance (Exhibit 1-Bayambang), it has not been shown that the property there mentioned is within the land in question.

As to appellant Aquino's petition that his title be recognized in these proceedings, we find that the land in question is agricultural, and that said appellant has been in possession as owner publicly and continuously, and that before him his predecessors held the land under like circumstances, so that the total unbroken possession of Aquino and his predecessors dates back to the year, 1887.

From Marciano Fajardo's testimony it appears that his father made an assessment declaration of all these lands for the year, 1902, though he did not pay the tax. (Pp. 146, 147, 184, t. s. n.)

The successive transfers of the land are also clearly shown. Bernabe B. Aquino bought it of Agustin V. Gomez, who had bought it of Getulio Pitco, who in turn, had acquired it from Juan Fajardo, in whose name the possessory information was obtained.

Therefore under paragraph (b), section 45, Act No. 2874, the appellant Bernabe B. Aquino is entitled to the land in question.

For these reasons, the claim of damages set up by the municipality of Bayambang is unfounded. Neither is appellant Aquino's claim of damages against this municipality sufficiently proved. It is not shown that the persons alleged to have caused the damages acted in pursuance of an order of said municipality, either official or maliciously.

We find nothing in the record to justify our holding the municipality of Bayambang liable for the damages claimed by appellant Aquino.

Wherefore, the judgment appealed from is hereby modified, and it is held that the land litigated in these two cases is not public land, but belongs exclusively to Bernabe B. Aquino, who is entitled to have the proper title issued to him through the proper proceedings under Act No. 496 and its amendments; and the judgment is reversed in so far as it dissolved the injunction against the municipality of Bayambang, which injunction is hereby held to be in force henceforth and forever, and so far as damages were adjudicated to said municipality *to which it is not entitled; finally, the judgment is affirmed in so far as it denies to said municipality the title it claims to said property.

This judgment is rendered without an express finding as to costs. So ordered.

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

[1] Government of the Philippine Islands vs. Abran, p. 397, post.

STREET, J., concurring in the result:

I concur in the result for the reason that the appellant here has, in my opinion, had possession for a period sufficiently long to entitle him to registration of the land claimed by him, without regard to documentary title.

OSTRAND, J.:

I dissent.[1]

[1] See dissenting opinion in the following case p. 403, post.

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