

JOSEFA AGUIRRE, PLAINTIFF AND APPELLANT, VS. MANUEL VILLABA, DEFENDANT AND APPELLEE.

G.R. No. 3469. March 31, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Upon examination of this appeal, filed with a bill of exceptions from a judgment rendered in this case by the Court of First Instance of the city of Manila, it appears:

That after the judgment was rendered on the 24th of July, 1905, against the plaintiff, the latter excepted on the 1st of August following.

That at the same time she asked for a new trial, and the following particulars are set forth in the same bill of exceptions:

"VII. On examination of the motion for a new trial filed by the plaintiff with the court presided over by Judge Araullo, the latter rendered judgment denying the said motion, and ordered the plaintiff to file the bill of exceptions within a period of ten days.

"VIII. The first period of ten days granted by the court being insufficient to perfect the bill of exceptions, the plaintiff, in a writing dated August 15, 1905, asked for an extension of ten days more for the perfection of said bill.

"IX. Within the extended period of ten days asked for by the plaintiff, the bill of exceptions was filed with the court, and she requested the same to be approved and certified. Manila, September 1, 1905."

It appears very evident that, the motion for a new trial having been denied, the plaintiff has not excepted, which is a condition required by the law in order that the Supreme Court may review the evidence on appeal.

This court, being thus prevented from making a review, will consider only the conclusions stated in the judgment, disregarding the evidence adduced.

The subject-matter of the complaint is a parcel of land situated in Calle Salsipuedes, district of Ermita, in this city, with an extension of 533.6719 square meters, the boundaries of which are expressed, and it was requested therein "that the court render a judgment declaring the plaintiff to be the sole and exclusive owner of the land in question and order the cancellation of the registration of said land which appears in the registry of property in the name of the defendant." To this end the plaintiff alleged that she had enjoined the possession and the usufruct of the property, as real and exclusive owner, since 1893, when she inherited said land from her mother, who had purchased it from Antonia Lagasca in 1879; but that the defendant registered the same in the registry of property in 1899, without any right thereto.

The conclusions of the judgment are the following: (1) * * * on the one hand, the boundaries fixed in these documents (those of the defendant) do not agree with those of the parcel of land described in the complaint * * *

and, on the other, when the defendant, Villaba, attempted to effect the registration of said deeds, the registrar, on September 19, 1898, suspended the registration asked for because, among other reasons, he noticed that, in spite of the fact that said Villaba had sold several parcels of the land to various persons, it appeared from the survey proceedings that the property had suffered no diminution, it having a total extension of 41,925 square meters, equivalent to 4 hectares 19 ares and 25 centares, the same as before the segregation of 1 quinon and 5 balitas, and, therefore, the registration was not made on that occasion, in the name of the defendant, Villaba— that is, of the land referred to in the deeds C and D, within which, as alleged, the parcel described in the complaint is included; (2) that counsel for the defendant has presented Exhibit No. 4, * * * a certificate in which the boundaries of each of the parcels registered are mentioned, but the boundaries do not agree with those of the parcel described in the complaint, nor does a comparison between such boundaries lead to the conclusion that the land referred to in the complaint is included within any of these parcels, nor that it forms a part of two or more of such parcels.

"Therefore (the court below infers) neither can it be said, in view of the certificates, that the registration of the land which the plaintiff claims to be her property ap-pears in the registry as made in the name of the defendant." (R of E., 11.)

For the reasons above stated, the court below absolved the defendant, Manuel Villaba, from the complaint filed against him by Josefa Aguirre with costs against the latter, concluding "that the cancellation of registration, asked for in the complaint, can not be ordered."

This conclusion is in accordance with the law and dismisses the second part of the petition—that is, the one relating to the cancellation of the registration said to have been made in favor of the plaintiff—and in this respect the judgment should be affirmed.

But, in view of the conclusions of the judgment, nothing has been shown to disprove the propriety of the first and most important demand of the complaint, namely that "Josefa Aguirre be declared to be the sole and exclusive owner of the land in question." If the right of dominion over the land claimed by the plaintiff as exclusively her property, against, the defendant's allegations, does not appear in the registry in the (name of another, the only reason for impugning the complaint being the fictitious registration, no registration in favor of the defendant having been shown, we must decide the question in favor of the plaintiff, and, if she had asked that the registration of her possessory information be decreed, such decree should have been issued. In this respect the judgment should not be affirmed.

Therefore, we reverse the judgment appealed from, and hereby declare Josefa Aguirre to be the sole and exclusive owner of the land specified in the complaint, without special ruling as to costs in both instances. So ordered.

Torres, Mapa, Carson, and Willard, JJ., concur.

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