

FERNANDEZ HERMANOS, APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS, THE DIRECTOR OF FORESTRY, THE MUNICIPALITY OF ZAMBOANGA AND EMILIO A. BUCOY, OPPONENTS AND APPELLEES.*G.R. No. 34906. September 23, 1931*

Ponente: IMPERIAL, J.

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This is an appeal taken by the applicant from the decision and order of the Court of First Instance of Zamboanga in cadastral case No. 98, dismissing its application for the registration in its name of thirty-one parcels of land known as the Hacienda Villa Ernesta, declaring said land to be of the public domain and adjudicating it to the Government of the Philippine Islands.

On December.29, 1928, Fernandez Hermanos, a general co-partnership, filed an application in the Court of First Instance of Zamboanga for the registration in its name of the said thirty-one parcels of land containing 2,642 hectares, 96 ares and 45 centares, situated in the barrio, formerly a town, of Ayala in the municipality of Zamboanga, Zamboanga, their technical description and boundaries appearing in detail in the plan and specifications marked Exhibit B, prepared by the surveyor. These parcels are included in cadastral case No. 124 of Zamboanga, and form lots Nos. 1460, 2428, 4014, 4021, 4022, 4023, 4024, 4025, 4026, 4027, 4028, 4029, 4030, 4031, 4032, 4033, 4034, 4035, 4036, 4037, 4038, 4039, 4040, 4041, 4042, 4043, 4044, "4045, 4046, 1461 and 2429.

The Director of Lands, represented by the Attorney-General, filed an opposition and alleged that the applicant and his predecessors had no right to claim the ownership of the said property because it was public land owned by the United States Government, under the control and administration of the Government of the Philippine Islands, and that Fermin Enriquez, Alejo Malones, Leon Macapili, Antonio Linares, Andian (Subano), Valentin Alvarez, Ignacio M. Santos, Balanda (Subano), Lorenzo Ayson, Nicolas Coronel, Tumangkis (Subano), Litusan fSubano), Dalis (Subano), Enrique Esperat, Ramon Enriquez, Hilario Tayco, Enrique Macapili, Braulio Esperat, Bienvenido Mar, Liberato Aguilar, Dionisio Abollino, Vicente Lozano, Eugenio M. Cruz, and Camilo Mora occupy portions within the lands claimed, by virtue of an application for lease, No. 21327, and homestead applications Nos. 73575, 12043, 12158, 12132, 12133, 28092, 28115, 38872, 35503, 32369, 31690, 47694, 50962, 22381, 33759, 33125, 31692, 52933, 35926, 36688, 34451, 33895, 33576, 33190, 31691 and 51958, respectively. Wherefore, said opponent prayed that the application be denied and that all the parcels of land in question be declared public land.

The Director of Forestry, represented by the provincial fiscal of Zamboanga, also filed an opposition alleging that the applicant does not possess any valid title granted either by the Spanish Government or by the Government of the Philippine Islands and that the aforesaid parcels of land are forest land belonging to the Government of the United States, under the control and administration of the Government of the Philippine Islands. He prayed that

the application be denied and that the parcels of land in question be declared public land.

Emilio A. Bucoy, likewise filed an opposition alleging that he was a homestead applicant for a parcel containing 24 hectares which parcel was within that sought to be registered by the appellant herein; that he had already paid the sum of P4 in accordance with the requirements of the Bureau of Lands, and that he had spent the sum of P390 for improvements thereon. He prayed that the application be denied with respect to the portion occupied by him.

Lastly, the municipality of Zamboanga, through the provincial fiscal, filed an opposition to the registration applied for, alleging that within the land in question were roads described in the sketch marked Exhibit A of the opposition, which afforded the only outlet from the barrios of Labuan and Lawigan to the provincial road. It prayed that the roads mentioned be excluded from the land covered by the application.

The facts as stated in the decision appealed from, are as follows: On December 26, 1898, Antonio Herrero de Calatayud, then a resident of Iloilo, filed an application in the Court of First Instance of Zamboanga for the registration of his possession of the Hacienda Villa Ernesta containing 2,300 hectares, situated in the town of Ayala, now a barrio of the municipality of Zamboanga, in accordance with the provisions of article 390 and subsequent articles of the Mortgage Law. He stated in his application that the land in question was bounded on the north and west by public land, on the east by the Patalun River, and on the south by the sea; that he had purchased said land for P2,300 from Antonio Herrero Rodriguez in June 1895; that the deed of sale executed in his favor had been lost; and that he took possession of the property in 1896. After the case had been tried and the alleged possession verified, the court approved it and ordered the registration of his possession in the registry of deeds without prejudice to third persons having better rights thereto, and it was finally registered on January 3, 1899. In the latter part of the year 1903, Calatayud sent one Ramon Blardon to take charge of the land and after clearing an area of from 40 to 50 hectares, he abandoned the whole hacienda about the beginning of the year 1905. On August 20, 1909, Calatayud conveyed the hacienda to Manuel Pardo y Ferrer in payment of his indebtedness to the latter. Upon the death of Manuel Pardo y Ferrer, the property passed to the firm, "Pardo, Robles and Brothers", which in turn conveyed it to the herein applicant-appellant, Fernandez Hermanos, through a deed of sale executed on January 7, 1918. During that year, the appellant firm sent its agent, Emilio Manuel, to the land for the purpose of buying from the occupants the improvements existing thereon. According to the survey made, the hacienda contains more than 2,642 hectares of which only 300 hectares along the shore of the Sulu Sea are under cultivation by persons who are in actual possession thereof by virtue of their lease and homestead applications, while the rest, which forms most of the so-called hacienda, consists of virgin forests containing 213.42 cubic meters of commercial timber of various groups per hectare.

It was agreed upon by the parties that the case should be decided on the findings of fact of the court a quo, for which reason the appellant did not file a motion for a new trial on the ground that the evidence did not support the decision appealed from.

Said appellant assigns only one error in the decision appealed from which may properly be reduced to the question of whether the possessory information title presented by it, Exhibit E-3, provides sufficient ground for the registration in its name of all the land comprising the so-called Hacienda Villa Ernesta.

In his application, the appellant invokes the provisions of section 19 of Act No. 496, as amended by section 1 of Act No. 2164, and in lieu thereof, the benefits granted by paragraph (6) of section 54 of Act No. 926, as amended by paragraph (b) of section 45 of Act No. 2874.

The pertinent parts of the provisions cited above, read as follows:

"SEC. 19. Application for registration of title may be made by the following persons, namely:

"Third. The person or persons claiming, singly or collectively, to own or hold any land under a possessory

information title, acquired under the provisions of the Mortgage Law of the Philippine Islands and the general regulations for the execution of same. * * *

"SEC. 45. The following-described citizens of the Philippine Islands and the United States, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply, to the Court of First Instance of the province where tfe land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

"(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

In connection with paragraph 3 of section 19 of Act No. 496, as amended, the appellant contends that it is entitled to the registration of the property applied for by reason of the possessory information title, Exhibit E-3. This contention is untenable. The legal provision invoked by the appellant requires two alternative essential conditions, aside from the possessory information title, to wit: that the applicant for registration be the owner of the land, or be in actual possession thereof, as may be inferred from the words "own" and "hold" used in the text of the law. Inasmuch as the appellant does not claim to be the owner of the land or to have title of ownership thereto, in view of the fact that the registration of possession had not been converted into a registration of ownership in accordance with article 393 of the Mortgage Law, necessarily the appellant had to base its application for registration on its possessory information title. Such was the ruling uniformly followed by this court in the cases of *Heirs of Luno vs. Marquez* (48 Phil., 855); *Government of the Philippine Islands vs. Heirs of Abella* (49 Phil., 374).

In the first case the court said:

"Besides the variance between the description of lot No. 4 in the plan Exhibit A, and that contained in the document Exhibit D, there is the fact that the evidence adduced by the appellants in support of their application is insufficient. They have not shown that they were in possession of said lot and were cultivating the same, and admitted that the portion in question was held and being cultivated by Policarpo Marquez.

"The lower court committed no error in denying the application of the appellants as to lot No. 4 of this proceeding, for the reason that it had not been proven that the document, Exhibit D, included said lot. But even assuming that it did include said lot, and supposing that such an error was committed, it would not affect the result of the case on account of the insufficiency of the evidence of the appellants as to their possession and cultivation. The possessory information alone, without proof of actual, public and adverse possession of the land under claim of title for a sufficient time in accordance with law, is ineffective as a mode of acquiring title under Act No. 496."

And in the second, the court declared:

"Apart from these considerations we are of the opinion that there is no satisfactory proof of continuous possession on the part of the appellants and their predecessors in interest of the lands now claimed by them. It is certain that these lands were unoccupied when the homesteaders made their advent in 1913, and they appear to have been vacant for an indefinite period prior to that epoch. The appellants' claim of ownership therefore fails not only for lack of certainty upon the point of the inclusion of the land in the description of Exhibit B, but for lack of continuity of possession on the part of the appellants and their predecessors in interest."

There is not the least shadow of a doubt that the appellant was not in possession of the land at the time it applied for its registration, and that the same had been unoccupied and abandoned for many years. It appears from the

record that it only attempted to occupy the land immediately upon its acquisition thereof from Pardo, Robles and Brothers, in 1918, but did not succeed in taking possession of the same as some homesteaders were cultivating an area of about 300 hectares along the shores of the Sulu Sea. With respect to its predecessors, it likewise appears that, although Antonio Herrero de Caiatayud bought the land in June 1895, he did not enter into the possession thereof until 1896, having remained in such possession up to 1905, when he entirely abandoned the land, thereby affording an opportunity for various persons, the oppositors herein, to file lease and homestead applications, for the portions now occupied by them.

In addition to what has already been stated, the evidence shows that the land claimed is virgin forest land, showing no signs of cultivation whatsoever, and that each hectare contains at least 213.42 cubic meters of commercial and valuable timber of different groups; all of which clearly proves that said land is of the public domain and has not yet passed to private ownership.

Neither can the appellant successfully invoke the benefits afforded by paragraph (6) of section 54 of Act No. 926 as amended by paragraph (6) of section 45 of Act No. 2874, for the reason that said law requires open, continuous possession of the land under claim of ownership, and the appellant has not complied with this requisite.

Lastly, it cannot be claimed that the registration of possession has been legally converted into a registration of ownership because the appellant has not complied with the requirements of article 393 of the Mortgage Law, to wit, that the applicant has been in open possession of the land; that an application to this effect be filed after the expiration of twenty years from the date of such registration; that such conversion be announced by means of a proclamation in the proper official bulletin; that the court order the conversion of the registration of possession into a record of ownership; and that the register make the proper record thereof in the registry. (Roman Catholic Bishop of Nueva Segovia vs. Municipality of Bantay, 28 Phil., 347; Querol and Flores vs. Querol, 48 Phil, 90; Government of the Philippine Islands vs. Heirs of Abella, 49 Phil., 374.)

Therefore, the decision and order appealed from being in accordance with the law, they are hereby affirmed, and the land herein claimed is declared to be public land; with the costs of this instance against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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