

LORENZA PAEZ, PETITIONER AND APPELLEE, VS. JOSE BERENGUER, RESPONDENT AND APPELLANT.*G. R. No. 3547. August 30, 1907*

Ponente: WILLARD, J.

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Lorenza Paez, the appellee, filed a petition in the Court of Land Registration asking that the estate called Maylibutad be registered in her name. A part of this estate is situated in the Province of Nueva Ecija and a part in the municipality of Arayat in the Province of Pampanga. As to four of the distinct parcels into which the estate is divided there was no question made. As to the fifth parcel, which lies within the Province of Pampanga, and whose area is 12 hectares 62 ares and 75 centares, Jose Berenguer, for himself and for the other heirs of Macario Berenguer, opposed the granting of the petition, claiming that the said fifth parcel of land was included in a tract of land of about 42 hectares owned by them. The court below held against this respondent, deciding that the said fifth parcel was a different tract of land from the tract owned by the respondent, and ordered the inscription of this parcel in the name of the petitioner. From this judgment the said respondent has appealed.

The principal question in the case is one of boundaries. Both parties claim title under deeds from the Spanish Government. The grantor of the petitioner, Manuel Fernandez, received a deed from the Spanish Government on the 14th day of June, 1887. This deed described a piece of land 13 hectares 14 ares and 32 centares in extent, situated in the sitio or place of Tatabunan, barrio of Camanchile, in the municipality of Arayat. An order was made on the 9th day of July, 1887, directing the proper authorities to put Fernandez in possession of this tract of land. This was done on the 5th day of November, 1887, by the gobernadorcillo of the town, accompanied by witnesses, as required by law. It appears in the case, moreover, that this land was surveyed on the 19th day of March, 1882, by a Government surveyor in accordance with the law. In all of the proceedings leading up to the deed the property is described as being located in the sitio of Tatabunan. One witness for the appellant, Fausto Medina, testified that he had been the municipal president of Arayat, had lived in the town for a great many years, and that there was no such place in the town as Tatabunan. It was demonstrated in the case that this statement was not true. In the proceedings above referred to, relating to the taking of possession by Fernandez, after he obtained his deed, there are five distinct documents, all of which are dated in Tatabunan. That there was such a place at that time, and that this land was situated therein, is proved beyond any question.

The oral evidence for the appellee showed that Fernandez and his grantees had been in possession of the piece of land described in the petition since the taking of possession by Fernandez down to the present time. Macario Berenguer, the father of the appellants, was the administrator for Fernandez and his grantees of this estate and was in charge of the very piece of land claimed by the petitioner. Two witnesses for the petitioner testified that Macario Berenguer had told them that this particular tract of land belonged to Fernandez. One of these witnesses, a surveyor and the present agent of the petitioner, was for some time the administrator of the estate. He testified that he went over the tract of land in question with Macario Berenguer, and that the latter pointed out to him the boundaries thereof, and that these boundaries are the same boundaries as those described in the petition. The

boundaries of the tract of land described in the petition coincide with the boundaries mentioned in the deed from the Government, except in one particular, which we do not consider important. A difference in area of less than a hectare is explained by the fact that the land is bounded on two sides by a river, the action of which has probably reduced this area.

The respondent and appellant claims under a deed made by the Spanish Government to Fausto Medina on the 10th of June, 1895. The land described in that deed is said to be situated in the sitio of Dandauli in the barrio of Camanchile in the municipality of Arayat, and to have an area of 42 hectares 20 ares and 87 centares. Although Fausto Medina was the purchaser of this land when it came to be sold by the State in 1895, yet the original applicant for the purchase thereof was Manuel Fernandez, the grantor of the petitioner, who made such application on the 23d of March, 1880. No judicial possession of this land was ever given to Medina by the Government authorities. In 1902 he sold the same to Macario Berenguer, the father of the respondent.

The land described in this deed is said to be bounded on the north and east by the small La Paz River, the same northern and eastern boundary which the petitioner's land has, with the exception that in the deed of the appellant there is no mention of the Sapa Lubigan, which is one of the northern boundaries of the petitioner's land. It appears from the documentary evidence in the case that these two tracts of land, that described in the deed of the petitioner and that described in the deed of the appellant, were surveyed by the Government authorities, the one on the 19th day of March, 1882, and the other on the 20th day of March of the same year. It also appears that the surveyors reported that the tract of land granted to Fernandez was about 7 kilometers from the town of Arayat and the tract of land granted to Medina about 6 kilometers.

An examination of all the evidence in the case satisfies us that the judgment of the court below is correct, and that the fifth parcel of land described in the petition is not included in the land deeded by the Spanish Government to Fausto Medina in 1895.

Several documents were admitted in evidence by the court against the objection and exception of the appellant, and these admissions he has assigned as errors here. For the reasons stated by the judge below, We think his ruling upon the admission of these documents was correct. It may be said, moreover, that the argument of the appellant indicates that at most the presentation of these documents was unnecessary and that they could have no influence upon the determination of the case. In such an event, even if there had been error on the part of the court, it would not have been prejudicial.

A more serious question, however, is presented by the exception of the appellant and respondent to the order of the court excluding him from the court room while a part of the evidence was being taken.

Counsel for the petitioner, at the session held on the 5th of February, 1906, stated that he intended calling the appellant, Jose Berenguer, as a witness for the petitioner, and asked that he be excluded from the court room while other witnesses of the petitioner were giving their evidence. The court granted this motion, and the respondent was excluded from the court room during a part of that session. In this we think the court erred. A party to an action has a right to be present in court while his case is being tried, and the rule authorizing the exclusion of witnesses during the trial can not be understood to extend to him. (*Streeter vs. Evans*, 44 Vt, 27.)

If, however, this error of the court was not prejudicial, the judgment can not be reversed on account thereof. Section 503 of the Code of Civil Procedure is as follows:

"No judgment shall be reversed on formal or technical grounds, or for such error as has not prejudiced the real rights of the excepting party."

It appears from the record that the appellant at the session held on the 25th day of November, and before the order

of exclusion was made, testified as a witness for the petitioner. It seems that he was present when other witnesses for the petitioner, including Carretero, gave their evidence at this session. At the session of the 28th of November evidence was presented on behalf of the respondent and it seems that he was present during this time. At this session the respondent closed his evidence.

At the commencement of the session of the 5th of February the motion above mentioned was made and the appellant was excluded from the court room. While he was absent Carretero again testified in behalf of the petitioner, and Salinas, counsel for the appellant, was called by the petitioner and testified. These were the only two witnesses that were examined during the absence of the respondent. He was present when Carretero again testified. The testimony given during his absence by his counsel, Salinas, related simply to the identification of certain handwriting, and the absence of the respondent during the giving of this testimony could in no way have prejudiced him. An examination of the testimony of Carretero, given during the absence of the respondent, with his testimony given at two different sessions when the respondent was present, will show that all of the testimony given during his absence was simply a repetition of the testimony given while he was present, with one exception—that is to say, during the absence of the respondent this witness testified that the grantor of the petitioner owned no land to the west of the land in question, which was bounded by the lands of the father of the appellant. We do not see how this one statement could in any way have prejudiced the rights of the appellant. That fact already appeared to a certain extent from the plan presented in evidence. Although the court committed an error in excluding the appellant from the court room, we have come to the conclusion that this error did not prejudice the rights of the appellant upon the merits of the case.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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