

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, APPLICANT AND APPELLEE, VS. JUAN FRANCO ET AL., CLAIMANTS. VICTOR RIVERA AND COHEIRS, APPELLANTS.

G.R. No. 35700. January 27, 1933

Ponente: STREET, J.

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STREET, J.:

On June 10, 1929, the Director of Lands, on behalf of the Government of the Philippine Islands, filed a petition in the Court of First Instance of Pampanga, in cadastral case No. 22, G. L. R. O. Record No. 1000, to settle and adjudicate the title to two parcels of land located in the municipality of Floridablanca, Pampanga, in accordance with the provisions of section 50 of Act No. 2874. Of these two parcels the lot No. 1 contains an area of 3.4648 hectares and the lot No. 2 an area of 20.5352 hectares. In this proceeding there appeared as claimants Victor Rivera and his coheirs, Romualdo, Antonia, Pelagia, and Geronima, of the same surname, it being alleged that said claimants had acquired possession of said lots by inheritance and that they, and their predecessors in interest, had been in possession of the same for a period of sixty years. At the hearing of the cause the Director of Lands asserted the right of the Government in behalf of Juan Franco, who has submitted his final proof for the purpose of securing a homestead patent thereto; and Juan Franco himself appeared for the purpose of proving his claim as a homesteader. After proof had been submitted the trial court overruled the claim of the Riveras and declared the land which is the subject of controversy to be public land, subject to the rights of Juan Franco. From this judgment the Rivera claimants appealed.

It appears that on June 14, 1894, Vicente Manacmul obtained a possessory information showing him to be the occupant of something near seventy-five hectares of land located in the sitio of Tibag, in the barrio of San Isidro, municipality of Floridablanca, in the Province of Pampanga, said land being bounded on the north by Estero Cabalasan, on the east by land of Nicolas Bravo, on the south by land of Timoteo Alberto, and on the west by the Esteros Tibag and Cabalasan. This possessory information was taken by Manacmul to the register's office of the Province of Pampanga in August, 1894, and on August 17 of the same year it was recorded by the register of deeds. In connection with the recording of this instrument, however, the register made it appear that, inasmuch as he was not at that time able to search the old register to ascertain whether there might be some older existing annotation to the contrary, he suspended the inscription, reserving to his future convenience the conversion of the provisional annotation into a definitive record. No further entry appears to have been made, but it is evident that no obstacle really existed which would have made definitive inscription improper, or at least no adverse interest has shown itself in the subsequent history of the property, other than that of Juan Franco, which will presently be mentioned.

Vicente Manacmul appears to have conveyed the property described in the possessory information to Julian Vitug, the predecessor of the Rivera claimants, and the same property is shown, under the same description, in the inventory of the property of Julian Vitug, deceased, filed in the Court of First Instance of Pampanga, on April 26, 1906, by the commissioners appointed in the administration of said decedent. In the year 1902 a part of the

property covered by the possessory information was declared for the purpose of taxation in the municipality of Floridablanca by Julian Vitug, at a valuation of P1,015. But this assessment covered some 26 hectares only, or only about one-third of the area supposedly contained in the possessory information.

But notwithstanding the qualification made of the inscription of the possessory information by the register of deeds, and notwithstanding a doubt suggested concerning whether Julian Vitug and his successors actually exercised possession over all the land supposed to be covered by the possessory information, we will assume, for the purpose of the solution of this case, that the record made of the possessory information was sufficient to accredit the fact of possession at that time by Vicente Manacmul, that the possessory information might, under the Spanish law, have ripened in the course of twenty years into a dominical title, and that the claimants of the surname of Rivera, as successors in interest of Julian Vitug might, if not now barred by the statute of limitations, have maintained their title to full ownership.

The proof submitted in behalf of the Government and its protege, Juan Franco, tends to show that prior to the year 1917, the lots in question did not pertain to any individual but belonged to the Government; and it is shown that said lots in the years extending from 1904 to 1922 were within the forest concession of one Petronilo Songco, of Betis, Pampanga, whose cutters were accustomed to take timber from the property. Moreover, in the year 1917, Juan Franco entered upon the property and, at the suggestion of Alejandro de Mesa, began to clear and cultivate the lots. In connection with his occupation of the property Franco built a house upon it, which he has been using as a habitation for himself and family. After he had thus established himself upon the land, Franco made application in the Bureau of Lands for a homestead located thereon, believing in good faith that the land belonged to the Government of the Philippine Islands. His application was accepted and registered in the Bureau of Lands and upon his compliance with all legal formalities, the Director of Lands later ordered the measurement of the land and the taking of final proof. Franco's possession was exclusive and uninterrupted until the latter part of the year 1929 when Victor Rivera, upon behalf of himself and his brothers and sisters, entered upon the property and attempted to plant a portion of ground which had already been prepared by Franco for sugar cane. Furthermore, Franco's possession was adverse as against all the world except the Government of the Philippine Islands.

The facts above stated raise, to our mind, a simple and well defined question of law, which is, whether Juan Franco, claiming in subservience to the Government, is entitled to the benefit of prescription under section 41 of the Code of Civil Procedure. Under this provision, in order to vest title by prescription or adverse possession, "the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants". This language is very explicit, and if attention be fixed precisely upon the letter of the law, it might seem that the right of the homesteader could not be sustained, since he admittedly did not claim adversely to the Government, and, therefore, it might seem that his possession was not, to use the customary formula, adverse to the whole world. There is indeed some authority for this point of view, but the better doctrine, revealing the drift of the later cases, is to the contrary; and it is now held, by the better considered decisions, that a person who takes possession of land in the erroneous belief that it is public land, with the intention of holding and claiming it under the homestead law, may acquire title thereto by adverse possession as against the true owner. (*Schneider vs. Hutchinson*, 76 Am. St. Rep., 481; *Mass vs. Burdetzke*, 93 Minn., 295; 106 Am. St. Rep., 436; *Iowa Railroad Land Co. vs. Blumer*, 206 U. S., 482, 495.) In *Boe vs. Arnold* (54 Ore., 52; 20 Am. & Eng. Ann. Cases, 533), the Supreme Court of Oregon had occasion to examine this question, and the older cases in that jurisdiction, holding that possession held in subservience to the Government was not adverse possession as against the true owner, were overruled and the doctrine established in conformity with the view above stated. This conclusion commends itself to us as correct. It is axiomatic that prescription cannot be asserted against the sovereign, and it is therefore futile for any claimant of real property to claim adverse possession against the Government. It results that it is

never necessary, in order to acquire title by adverse possession against an individual owner, that the person asserting adverse possession should have held adversely to the Government. The decisions bearing upon this point will be found collated in the note to *Boe vs. Arnold* (20 Am. & Eng. Ann. Cases, 533), as well as in 2 C. J., pp. 130, 131, and it is unnecessary to extend the discussion.

From what has been said it follows that the title of Juan Franco to the land claimed by him as homesteader is good and no error was committed by the trial court in declaring said parcels to be public land, subject to the rights acquired by the homesteader.

The judgment appealed from is therefore correct and the same is affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Ostrand, Abad Santos, and Butte, JJ., concur.

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