

PEDRO P. ROXAS, PETITIONER AND APPELLEE, VS. JULIA TUASON, THE MUNICIPALITY OF SAN PEDRO MACATI, AND ALEJANDRO AND CONSOLACION AGUIRRE, RESPONDENTS AND APPELLANTS.*G.R. No. 3788. December 21, 1907*

Ponente: TORRES, J.

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On February 19, 1906, attorneys Rosado, Sanz & Opisso, on behalf of Pedro P. Roxas, applied for the registration of the estate owned by the said Roxas, known as the Hacienda de San Pedro Macati, in accordance with the provisions of the Land Registration Act; said hacienda was acquired by the petitioner by inheritance under the will of his late father, Jose Bonifacio Roxas y Ubaldo. The property consists of four different parcels of land, irregular in shape, designated on the accompanying plan under the letters "A," "B," "C," and "D," containing a total area of 1,761 hectares 51 ares and 5 centares, equivalent to 17,615,105 square meters, and according to the last assessment for the purpose of taxation assessed at P415,221.34, of which P59,904 corresponded to the portion of said hacienda included within the limits of the city of Manila and P256,760 corresponded to that portion situated in the Province of Rizal. The building constructed of strong materials, called the "Casa-Quinta" or "Casa de Ingenieros," belonging also to said Roxas, is erected within parcel "C," occupying, together with its appurtenances, an area of 8,430 square meters, and was assessed at P98,557.34. It does not appear that said hacienda is mortgaged nor that any person has any right to or any interest therein; and it is almost wholly occupied at the present time, under lease, by about 429 tenants whose names, residences, and postal addresses, as well as the residence of the owner of the property and of his attorney in fact, are stated in the application.

In his writing of April 24 the petitioner requested the summoning of the persons therein named, and stated in addition that the total area of the hacienda is 17,613,595.91 square meters, as specified in the corrections made to the technical description.

In another writing dated July 24, 1906, amending his former application, the petitioner gives the postal address and names of several occupants of the property; and by other amendments to his original petition dated August 30 and September 25, 1906, rectifications are made in the boundaries of the hacienda, the last of which represents a decrease of 1,446.70 square meters, or 14 ares and 46.70 centares which must be deducted from the original description.

The owners of the adjoining properties having been summoned and notified by means of subpoenas and notices published in the daily papers, one of them, Julia Tuason, appeared and by a document dated September 10, 1906, set forth her opposition to the registration and authentication of the title of the petitioner, Iloxas, as regards the parcel marked "C," for the reason that two old monuments which had separated their respective properties had been pulled down and new ones erected without her consent, and in her opinion the latter included a considerable portion of the land owned by her, as may be seen on page 122, part IV, of the record.

The municipality of San Pedro Macati also filed opposition to the requested registration, alleging that the land

occupied by the municipal building and the public school had been in the possession of the town from time immemorial, and that all the land occupied by roads, highways, lanes, and public landing places belonged to the public domain and should be excluded from registration in favor of the petitioner.

Under date of the 18th of September, 1906, the attorney for Alejandro Aguirre and Consolaci6n Aguirre also filed opposition to said application for registration alleging that two parcels of land owned by them had been improperly included within the bounds of said hacienda in the parcel marked "C," the second of said parcels, which is the only subject of the respective bill of exceptions and appeal interposed by them, consists of a building lot situated in Calle San Pedro, opposite the first parcel of land, which was the subject of another bill of exceptions and appeal by the petitioner; said second parcel measures 10 meters and 87 centimeters on its front and rear, and 9 meters 20 centimeters along each of its sides, its boundaries being stated.

Evidence consisting of both oral testimony and documents, which appear in the record, having been adduced by both parties in the suit, the judge, after a notation of default having been entered against all the respondents, rendered his decision on the 17th of October, 1906, overruling the opposition made by Julia Tuason, by the municipality of San Pedro Macati, and by Alejandro and Consolacion Aguirre as to the second parcel, and ordered the registration of the Hacienda of San Pedro Macati in favor of Pedro Roxas, the petitioner herein, excluding the parcel of land with a frontage of 23 Spanish yards and a depth of 24 Spanish yards occupied by the municipal building, which the government has the right to use without the payment of rent therefor, so long as the same is occupied by the said building or by another in substitution thereof and used for the public good and for official purposes. The respondents, Julia Tuason, the municipality of San Pedro Macati, and Alejandro and Consolaci6n Aguirre, excepted to said judgment and moved for a new trial on the ground that the same was contrary to law and to the weight of the evidence; said motion was overruled, the respondents again excepting. The respective bills of exceptions having been presented, the same were forwarded in the ordinary manner.

The only subject of controversy between the petitioner, owner of the Hacienda of San Pedro Macati, and the respondent Julia Tuason is the question of the boundary line, between their respective contiguous premises.

The representative of the petitioner affirms that the real boundary of the hacienda on the side that adjoins the land of Tuason was and still is a creek or sapa separating both properties, and that in former years said creek was wider than at the present time.

The respondent, however, maintains that the boundary between the sitio called Suavoy, formerly an island of that name, and the Hacienda of San Pedro Macati .is determined by straight lines drawn between some old monuments distant a few yards from the bank of the said creek.

The record does not show that the boundary of the land of Julia Tuason was inclosed by monuments belonging to her or that the creek which divides the sitio or Island of Suavoy from the land of the said hacienda is included within the respondent's land, since in the bill of sale executed by the procurador general of the Augustinian friars on March 28, 1893, to Julia Tuason, no mention is made of monuments erected thereon nor of any creek existing in the large tract of land purchased by her, except that the land is situated in the barrio of Suavoy and that it is bounded on frsvo sides by the Hacienda of San Pedro Macati.

Nor does the record show that there was more land on the side of the hacienda, forming part of the barrio or sitio of Suavoy, not included in the tract acquired by Tuason from the Augustinian Fathers, and that said creek traversed said barrio from one end to the other, or the respondent's land, in order to affirm on good grounds that her land extended to the opposite bank of the aforesaid creek.

From the fact that the land of Julia Tuason was bounded on two sides by the Hacienda of San Pedro Macati it does

not follow that the strip of a few meters in width on the bank of the creek above referred to belonged to her, there being no evidence in support thereof, and if her statement were true, she would have applied for a survey and demarcation of her property in accordance with the area of the same stated in her title deed; and if she did not do so it must be because she renounces its verification in this manner or for some other reason.

Further than this, it is impossible to draw the above conclusion, inasmuch as the strip of land, irregular in shape, running parallel to the creek and forming a portion of its bank, has always up to the present time been occupied by tenants of said hacienda as being an integral portion thereof, even at the time when the land now owned by Julia Tuason belonged to the Augustinian Fathers, the original owners thereof.

It is so affirmed by Rafael Rivera, the collector of rents of the hacienda, and by two tenants thereof, Tomas Medina and Santos Tenorio; the two last named were lessees for about thirty years and twenty-seven years, respectively, of certain portions of the hacienda with their respective part of said strip, as a prolongation and integral part of the lands of the hacienda, and they were never molested or interfered with by the Augustinian Fathers or their tenants, nor later by Julia Tuason, who later acquired the adjoining land on the other side of the creek, or by her tenants; these latter when cultivating the land did not cross the creek, it being recognized as the boundary line between both properties; that in 1871 the said creek was wider than at present, having then a width of about 4 Spanish yards, small bancas plying on it around the Island of Suavoy, and some of the monuments of the hacienda were 4 meters distant from the bank, others 2 meters, and some 1 meter; that the witness Santos Tenorio was present at an interview held between an Augustinian priest named Martinez, in charge of the land at the time, and the owner of the hacienda, Bonifacio Roxas, in connection with the boundary line of the two adjoining estates, and after some explanations the said creek was settled as the limit. In spite of the fact that the old monuments were already in existence at some distance from the bank in the direction of the hacienda; and that in 1882, when the first-named witness, Rafael Rivera, took charge of his office of collector, the owner of the hacienda pointed out to him the said creek as the limit of his property, everybody asserting that Suavoy was at that time an island, although two of the witnesses of the respondent stated that said creek was only a canal.

The proven fact that said creek was wider in 1871, when it had a width of about 4 Spanish yards, is the best explanation as to why some of the monuments of the Hacienda of San Pedro Macati are now at some distance from the bank of the same, and no legal reason whatever exists why the slow increase which has taken place on the hacienda's side should be considered as belonging to the respondent, inasmuch as the latter does not own the bed of the creek and because it may be assumed that the slow decrease in the width thereof benefited both properties equally since the respondent has not been able to show or prove that her land has been thereby reduced.

Article 366 of the Civil Code in dealing with the right of accession to real property reads:

"The accretions which banks of rivers may gradually receive from the effects of the currents belong to the owners of the estates bordering thereon."

The provision in this article is perfectly applicable to the strip of land, which, on account of the accretion, has come to be an undeniable increase in the land of the hacienda inasmuch as it has increased all along the bank of the creek, the gradual effect of the currents; and even though the law does not require an express act of possession of the accretion which has enlarged the estate, it is certain that the owner of the hacienda has possessed it for more than thirty years through his tenants, who have been cultivating their respective parcels of land together with the corresponding portion of the said strip down to the bank of said creek.

For these considerations the question of the situation of the old monuments and the placing of new ones, in the intervening space is of no importance, inasmuch as it has already been shown that the respondent has no title to the accretion which by spontaneous increase formed the strip of land between the creek and the monuments, and

no proof is offered in the record that the land of Julia Tuason reached the other side of the creek toward the Hacienda of San Pedro Macati.

In conclusion: The result of the evidence, as stated in the judgment appealed from, does not maintain the claim of the respondent; on the contrary, it has been shown in a convincing manner that the present natural limit of both properties is the aforesaid creek; therefore, the opposition filed by Julia Tuason is untenable.

As to the opposition filed by the municipality to the registration applied for, the judgment appealed from is held to be in accordance with the law and the merits of the case because, as is therein set forth, the petitioner, Pedro Roxas, is the owner of the building lots and portions of land to which the said opposition refers; the municipality of San Pedro Macati has only the usufruct of the plot occupied by the municipal building as long as the same or any other building of a public and official nature is erected thereon; the municipality can not dispose of it as a property of its own because, according to the documents offered in evidence by the petitioner, the Spanish Government had recognized the dominion of the petitioner's predecessor over the land occupied by said municipal building and by the town cemetery, and the grant made by the owner was ever understood to be only of the usufruct thereof so long as used for public purposes, the same being returnable to him upon ceasing to be used for such purpose.

In connection with the land occupied by the public school of said town, no opposition based on ordinary or on extraordinary prescription may be made by the municipality because the plot was granted only for the purpose of erecting thereon a public school, and the possession thereof, on the part of the municipality, was simply usufructuary, the government of the Province of Manila having recognized the title thereto which pertained to the petitioner, OAvner of the said hacienda, whereof the said plot forms a part; moreover, the possession thereof by the municipality has been but for a few years only. The school building having been destroyed, the land was abandoned many years ago, and for this reason prescription can not be invoked because the possession thereof was interrupted and ceased many years since; in view thereof, the decision of the lower court respecting the petition of the municipality is held to be in accordance with the law and the merits of the case.

The attorney for Alejandro and Consolacion Aguirre excepted to the decision of the 17th of October, 1906, whereby their claim to the second parcel of land, as stated in their petition, was dismissed; their bill of exceptions, entered in the general register under No. 3788, was duly forwarded, but notwithstanding the fact that the time prescribed has been exceeded, the appellants have not filed their brief nor notified the appellee regarding the same; therefore, the latter by a petition dated June 26, 1907, requested that their appeal be considered as having been abandoned; this request is held to be well based and in accordance with the law.

Therefore, by virtue of the considerations above set forth, it is our opinion that the judgment appealed from should be affirmed as regards the respondents who have appealed, Julia Tuason and the municipality of San Pedro Macati; the appeal of Alejandro and Consolacion Aguirre is hereby declared to be abandoned, each of the appellants to pay their respective share of the costs. So ordered.

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

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