

ROSALIA ROSADO, APPLICANT AND APPELLANT, VS. THE DIRECTOR OF LANDS ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 37913. November 24, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Masbate, in case No. 59, G. L. R. O. Record No. 38041, in which the appellant petitioned for the registration in her name of a parcel of land of 966 hectares, 30 ares and 95 centiares, situated in the barrio of Calumpang, in the municipality of Milagros, Province of Masbate.

The application of Rosalia Rosado, which was filed on December 27, 1929, was opposed by the Director of Lands and the Director of Forestry.

The appellant makes the following single assignment of error:

"El Juzgado a quo erro al denegar la inscripcion a nombre de la solicitante apelante, Rosalia Rosado, en el Registro de la Propiedad de la Provincia de Masbate, de todo el terreno descrito en el Piano Exhibit A de 966 hectareas, 30 areas y 95 centiareas, y al declarar que dicha solicitante solamente tiene derecho a la inscripcion a su nombre de una porcion del referido terreno compuesta de 144 hectareas, 89 areas y 70 centiareas."

The appellant claims that she acquired title to the land included in her application by purchase on June 28, 1928, from Lucina Danao, the widow of Serapion Dimen, the sons of the latter and Gavino Vinluan, the deed of transfer appearing in the record as Exhibit E. This deed contains the following recitals:

"1.º Que el referido Serapion Dimen en vida estuvo unido en matrimonio canonico con la mencionada Lucina Danao y durante su vida y union conyugal con la citada Lucina Danao tuvo con esta hijos legitimos, los cuales son: Tiburcio, Caridad, Pantaleon, Rafaela, Salvadora, Jorge, Felipe y Antonio, todos de apellidos Dimen, estos tres ultimos son aun actualmente menores de edad.

"2.º Que Serapion Dimen, a su fallecimiento, dejo un derecho pro indiviso sobre un terreno ubicado en el sitio de Calumpang de la jurisdiccion del Municipio de Milagros, Provincia de Masbate, I. F., de ciento cuarenta y cuatro hectareas, ochenta y nueve areas y setenta y siete centiareas, tal como aparece en el titulo real de propiedad adjudicado a Don Alejandro Danao por el fenecido Gobierno Español registrado y tornado razon en la Administracion Central de Manila al folio 22 del libro correspondiente y expedido el 2 de abril de 1887 cuyos linderos son los siguientes:

"Al Norte y Oeste terrenos del Estado; al Este playa y al Sur bosque y terrenos del Estado. Este terreno no tiene mojones visibles y esta amillarado a nombre de Alejandro Danao bajo el tax No. 2195, valor P1,450."

The grantors of Rosalia Rosado acquired the land, which they conveyed to her, from Alejandro Danao by a deed dated February 26, 1920, which appears in the record as Exhibit C. This deed contains the following recitals:

"* * * hago constar por la presente que vendo y traspaso a los feferidos Sres. Serapidn Dimen y Gavino

Vinluan sus herederos y causahabientes el terreno pasto con sus mejoras de cabida de 144 hectareas, 89 areas y 70 centiareas, segun consta en el Titulo Real de propiedad adjudicado a mi nombre por el Gobierno Español fenecido, que traspaso igualmente a los mismos compradores, registrado y tornado razon en la Admon. Central de Manila al Fo. 22 del Libro correspondiente y expedido en 2 de abril de 1887; cuyo terreno pasto se halla enclavado en el sitio denominado Calumpang de la jurisdiccion del mismo Municipio de Milagros, Sorsogon, I. F., dentro de los limites y linderos siguientes:

"Al Norte y Oeste, terrenos del Estado; al Este, la playa; y al Sur, bosque y terrenos del Estado."

The land which Alejandro Danao conveyed to Serapion Dimen and Gavino Vinluan (Exhibit C) was formerly a part of the public domain and was acquired by him in the following manner: On April 20, 1883, Alejandro Danao made application to the "Tribunal del Pueblo de Milagros", which was composed of the Gobernadorcillo, the Director of Forestry and two councilors, for permission to purchase, after due survey, a tract of land in the barrio of Calumpang aforesaid which is described as being bounded on the north by public domain, on the east by the seashore, on the south by public forest land and the River Calumpang which touches the southwest point, and on the west by public domain. No area was stated. He asked in said petition that a survey of said land be made after due public notice to the owners of the adjoining lands. Alejandro Danao, now ninety years of age, testified in the present land registration case that an accurate survey was made in pursuance of the order of the Tribunal del Pueblo and he was present when the same was made. The corners, according to his testimony, were indicated by "banderillas". This survey disclosed that there were exactly 144 hectares, 89 ares and 70 centiares in the tract of land which Alejandro Danao desired to purchase. Following said survey (see Exhibit B) the said 144 hectares, 89 ares and 70 centiares of land were appraised at P2 a hectare, making a total of P289.79. At the public auction which was held on March 26, 1886, Alejandro Danao was the sole bidder, offering for said land the sum of P290. It is recited in the expediente that this bid "mejora el tipo en 20% cmos. y por tanto debe hacerse la adjudicacion a su favor." The expediente definitely adjudicates to Alejandro Danao "las ciento cuarenta y cuatro hectareas, ochenta y nueve areas y setenta centiareas enclavadas en el sitio de Calumpang, Pueblo de Milagros, Distrito de Masbate y Ticao, comprendidas en los limites siguientes: al norte y oeste, terrenos del Estado, al este, la playa y al sur bosque y terrenos del Estado en la cantidad de doscientos noventa pesos * * *."

Among the published conditions of the auction of said land are the following:

"Las diligencias necesarias para obtener la posesion de los terrenos subastados seran igualmente de la competencia administrativa, como tambien el entender en el examen de la resolucion de las dudas sobre limites y condicion de la posesion dada. TERCERA. Si entablase reclamacion sobre exceso o falta del terreno subastado y del expediente resultase que dha. falta o exceso iguala a la quinta parte de la expresada en el anuncio, sera nula la venta, quedando en caso contrario firme y subsistente y sin derecho a indemnizacion ni la Hacienda ni el comprador."

It is further stated that the auction "de ciento cuarenta y cuatro hectareas, ochenta y nueve areas y setenta centiareas, bajo el tipo en progresion ascendente de doscientos ochenta y nueve pesos setenta y nueve centimos y cuatro octavos" should take place on the 26th of March, 1886.

At the trial of the registration case on September 24, 1931, Alejandro Danao testified as follows:

"P. ¿Cuántas hectareas de terreno ha comprado Ud. del Gobierno Español?—R. Ciento cuarenta y cuatro (144) hectareas.

"P. De estas ciento cuarenta y cuatro (144) hectareas, ¿es el area del terreno que Ud. ha ocupado?—R. Si, señor.

"P. ¿Nada mas que eso?—R. Nada mas."

In all of the public documents, the conveyances, tax declarations and the like, from the year 1886 until the year

1928, the original and accurate survey of 1886 showing that it was the intention of the Government to sell and Alejandro to buy 144 hectares, 89 ares and 70 centiares, was assumed as correct and is repeated in all of the deeds, even in the deed of the claimant herself, Exhibit E. It is doubtless true that when a deed describes a tract of land by definite and ascertainable boundaries, an additional statement as to the area included is of secondary importance, because it is presumed that the parties to the deed contracted with reference to the land specifically delimited in the description. But this rule, has no application in the present case for two reasons: First, because the land is not specifically delimited by definite and ascertainable boundaries; and, second, because the record shows, as above set out, that the Spanish Government and Alejandro Danao contracted with reference to a definite area, because the minimum acceptable bid was based on an area of 144 hectares, 89 ares and 70 centiares. The testimony of Alejandro Danao convinces us that he never claimed or occupied a greater area than 144 hectares, 89 ares and 70 centiares. The applicant's sole claim in the present case is thru a chain of title from Alejandro Danao.

The record does not show that Rosalia Rosado has legally acquired the interests of the three minors, Jorge, Felipe and Antonio Dimen. A reservation, therefore, in their favor should be made in the registration of the title. With this modification, the judgment of the court below is affirmed with costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Diaz, JJ., concur.

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