

LUDOVICO AREJOLA, PLAINTIFF AND APPELLEE, VS. GREGORIO LUNA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 41974. July 05, 1935*

Ponente: VICKERS, J.

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On March 13, 1929 Ludovico Arejola filed this action in the Court of First Instance of Camarines Sur to recover from the Director of Lands and nine homesteaders, whose names are not stated in the caption of the bill of exceptions, the title to and the possession of a parcel of agricultural land located in the sitios of Poctol, Buyo, Tahan, Pigvisitahan, Manati, Sagcahan, Nagadap and May-buri, in the barrio of San Jose, in the municipality of Minalabac, Province of Camarines Sur, having an area of 184 hectares, 71 ares, and 83 centares, and bounded on the north by the Bicol river and the land of Arsenio Valenciano and Alejandro Villanueva; on the east by the land of Tomas Basmayor and the Bicol river; on the south by the Bicol river, the Sibagat river, and the Taisan brook; and on the west by the land of Serafin Rojano, uncultivated lands, and the estero of Poctol, assessed at P11,080 in accordance with Tax No. 6192.

The Director of Lands in his answer denied the allegations of the complaint and alleged as a special defense that the land in question was part of the public domain and as such was under the direct disposition and management of the defendant Director of Lands; that said land had been applied for by several homesteaders, among them the other defendants in the case; that the plaintiff, recognizing the authority and power of the Director of Lands' over lands of the public domain, filed in due form his protest in the Bureau of Lands against the homestead applications of the other defendants; and that after due investigation, and acting under the authority vested in him by law, the Director of Lands dismissed plaintiff's protest, because his claim was found to be groundless and unsupported by any valid evidence or title.

The answers of the other defendants are not included in the bill of exceptions presented by the Director of Lands.

By agreement of the parties the trial of the case was referred to a referee, and with their consent the clerk of said court was appointed to act as referee.

Upon the completion of the trial the referee filed the following report on July 11, 1933:

"Esta es una accion para reivindicar nuevos lotes de terreno ocupados por los nueve primeros, respectivamente, de los 10 demandados, en virtud de solicitudes de homestead ya aprobadas por el otro demandado, el Director de Terrenos; el demandante alega que todos dichos lotes estan dentro del terreno descrito en el p&rrafo 2.º de su demanda, y que 61 ha adquirido este terreno a titulo de compra. Los demandados, en su contestaci6n, alegan, a su vez, que 103 lotes en cuesti6n son terrenos del Estado.

"El demandante, habiendo tenido conocimiento de tales solicitudes de homestead, present6 protesta contra las mismas ante el Director de Terrenos. Este funcionario, despues de haber hecho investigar el caso por la oficina local del Bur6 de Terrenos,, en cuyo acto el demandante no estuvo presente, y en vista del resultado de dicha investigacion, concluyo que los terrenos objeto de la protesta son terrenos del Estado y asi desestim6 dicho

recurso; de ahí la presentación de la demanda en esta causa.

"Las partes convienen en la identidad de los lotes en cuestión excepto en cuanto al lote solicitado por el demandado Antonio Ortega, pues mientras el demandante alega que este lote se halla dentro del terreno descrito en el párrafo 2.º de la demanda, los demandados lo representan como que colinda al este con dicho terreno y, por consiguiente, que esta fuera del mismo (Exhibit 4).

"La gran diferencia en la configuración y orientación del referido terreno, entre el croquis Exhibit A del demandante y el plano Exhibit 4 de los demandados, se debe tan sólo a que el croquis fue trazado por uno que no es agrimensor aunque, según el demandante, es práctico en la medición de terrenos; al paso que el plano fue levantado por un ajarrimensor cualificado y empleado del Buró de Terrenos.

"Se ha establecido por preponderancia de pruebas que el terreno descrito en el párrafo 2.º de la demanda se compone de cinco (5) porciones que se indican en el croquis Exhibit A con los números 1, 2, 3, 4 y 5, respectivamente, y que fueron adquiridas por el demandante por compra; a saber, de Eugenia Huerta, la porción No. 1 (Exhibit B); de Fabiana Arejola, la porción No. 2 (Exhibit E-1); de Juana de Dios, la porción No. 3 (Exhibit G); de Nemesio David, la porción No. 4 (Exhibit 1); y de Antonio San Jose, la porción No. 5 (Exhibit J).

"No cabe duda que los lotes en cuestión, con excepción de los que se reclaman de los demandados Antonio Ortega (H-50269) y Narciso Sange (H-75961), respectivamente, están situados dentro de la pieza de terreno que el demandante adquirió por compra como se ha dicho, y que él ha venido poseyendo desde su adquisición en los años 1893 y 1894, cocinando cal de piedra en 16 hornos que hay allí, cortando lenas y canas, y percibiendo participación como dueño de las cosechas de palay y de los demás productos de dicho terreno; y que el demandante puso y tuvo allí a Mateo Deveras, Francisco Bernardino y Felix Soils, como encargados suyos, sucesivamente.

"El demandado Antonio Ortega, que declaró tener 72 años de edad, pero que aparece ser de más de 80, dijo que nació en el lote que él ocupa y el demandante reclama, y allí alcanzó a su padre; que en su vida jamás ha salido de ese lugar, que ha estado cultivándolo, sembrando palay y otras plantas alimenticias y cocos y demás árboles frutales, habiendo al presente en este lote unos 50 pies [ponos] de coco fructíferos desde hace ya muchos años; y que allí ha estado siempre su casa. Esta declaración del demandado Antonio Ortega no ha sido desmentida por las pruebas del demandante, cuyos testigos han admitido la larga permanencia de Ortega por aquel lugar, aunque para contrariarlo de algún modo, tal cual de dichos testigos dijo que Ortega ocupaba anteriormente otro sitio, habiéndose mudado a donde está ahora su homestead hace pocos años no más; pero no consta de autos razón alguna para que Ortega cambiase de lugar, dejando ahora que ya es viejo el anterior, donde permaneció" en toda su vida hasta entonces, y que había estado cultivando y solicitado a título de homestead desde el año 1917. Lo dicho por los encargados del demandante de que Ortega pagaba por su lote un tanto de su producto, al demandante como dueño, no merece crédito, pues no hay dato alguno en la causa de que Ortega hiciera lo propio con ninguno de los causantes de dicho demandante. Es evidente que el terreno que Ortega ocupa es terreno del Estado y por ser así no forma parte de ninguna de las cinco porciones traspasadas en venta al demandante por sus aludidos causantes, ni el demandante pudo haberlo poseído jamás, por haber sido el demandado Ortega quien ha estado en continuada posesión del mismo.

"En cuanto al demandado Narciso Sange, es satisfactoria la prueba de que el lote que se le reclama es asimismo terreno del Estado, que su padre, Gregorio Sange, entró a ocupar y cultivar, muchos años antes de fenecer el Gobierno Español, tanto es así que este demandado Sange, que ahora ya es quincuagenario, nació en este lote, al igual que el demandado Ortega en el suyo; que el referido padre del demandado Sange siguió desde entonces ocupando y cultivando este lote hasta su fallecimiento ocurrido en 1906; y que de entre las plantas y árboles sembrados por el difunto quedan en la actualidad 20 ponos de coco fructíferos y ya viejos. Verdad es que este demandado (Sange), por haber sentado plaza de soldado, como scout, se ausentó de la provincia en 1904, quedando dicho terreno abandonado desde la muerte de su padre en 1906 hasta que el demandado Sange

regresó, una vez licenciado del servicio, en 1914; pero luego que hubo vuelto, y aunque se dedicó, como se ha dedicado hasta ahora al oficio de barbero aquí en Naga, tomó posesión de nuevo del terreno, poniendo allí a Pablo Sereho en su lugar y yendo a visitarlo una vez por semana. Todo iba bien para este demandado hasta que habiéndose solicitado a título de homestead en el año 1922, y enterado de ello después el demandante, este último presentó la protesta de que arriba se ha hecho mención. Como se ve, el hecho de haber quedado abandonado este lote en los años 1906 al 1914 (un periodo de 8 años), aun suponiendo que el demandante lo poseyera durante aquel tiempo, esto no le inviste de título al demandante sobre dicho inmueble; y siendo este el caso, el demandante no tiene acción para reivindicarlo.

"Pasando ahora a los lotes reclamados de los demandados Gregorio Luna, Rosalio Vinas, Maximino López, David Sacramento, Isidoro Remetera, Eulogio Arindaing y Policarpo Jardinero, es evidente que todos estos lotes están comprendidos dentro de los límites del terreno adquirido por el demandante. Estos demandados alegan que dichos lotes forman parte asimismo de los terrenos del Estado, y que los supuestos causantes del demandante ni los encargados de este han estado jamás en posesión de los mismos. Esta pretensión, sin embargo, está contradicha por las declaraciones del demandante y sus testigos. Entre ellos Anacleto Naval dijo que en los años 1893 a 1896 se dedicó a comprar leñas y canas en las porciones Nos. 1, 2 y 3 del croquis Exhibit A, de sus dueños respectivos, llamados Eugenia Huerta, Felipe Mendoza y Marta Candelaria, quienes, según se ha probado son los causantes del demandante; y que más tarde, o sea, en los años 1904 y 1905, después de la adquisición de dichas porciones por el demandante, 61 (Naval) volvió allí y sembró cocos para el demandante. Por otra parte Sotero Platon, Secretario del pueblo de Minalabac, Camarines Sur, declaró que en 1894, cumpliendo órdenes superiores, 61 asistió al gobernadorcillo del pueblo a deslindar los terrenos públicos y privados, levantando croquis de los mismos, encontrando, en el terreno, descrito en el párrafo 2.º de la demanda, a los causantes del demandante en posesión de sus respectivas porciones.

"Vicente Rivera, un agrimensor del Bureau de Terrenos, dijo que por orden del Director de Terrenos, practicó investigación sobre este terreno a raíz de la protesta del demandante contra las solicitudes de homestead de que ya se ha hecho mención, hallándolo sin señales de cultivo, por lo que infirió que es terreno del Estado, lo cual, según él, se corrobora por la declaración ante el mismo de un viejo llamado Felipe Colis, quien—añadió el testigo Vicente Rivera—dijo que ni el demandante ni sus supuestos causantes o encargados habían estado alguna vez en posesión del terreno reclamado en la demanda. Es de notar, sin embargo, que el demandante no estuvo presente ni representado en aquella investigación, aunque, según dicho agrimensor, tres días antes de la misma, se le hizo decir al demandante por un mensajero de su oficina, que compareciera. Otro dato que afecta el valor de esta declaración, es que el tal Felipe Colis, de quien el agrimensor Rivera pidió informaciones en aquella investigación, no es persona desinteresada, por ocupar otro lote del terreno que el demandante reclama (véase Exhibit 4). Por otro lado, Inocentes Ramirez, montero del Bureau Forestal, declaró que el terreno descrito en el párrafo 2.º de la demanda está dentro de la zona de concesión de licencia para el corte de leñas a favor de Leandro Villanueva expedida en 1918 (Exhibit 6), citando para apoyar su aserto el croquis oficial Exhibit 7 de dicha zona, en el cual 61 señaló dicho terreno con un círculo en tinta negra y la marca Exhibit 4. No resulta, sin embargo, de su testimonio que el demandante tuviera conocimiento de dicha concesión para poder presentar protesta contra la misma; y como, por otra parte, esta concesión comprende una zona de más de dos mil hectáreas (página 211, transcripción de las notas taquigráficas), pudo haberse dado el caso de no haber llegado al citado terreno el corte de leñas del concesionario Leandro Villanueva, pues no hay en autos indicación alguna de que la operación de dicho corte fuera tan en gran escala. Finalmente, las declaraciones de dos de los testigos de los mismos demandados, a saber Antonio Ortega y Manuel Villanueva, son en favor del demandante. Antonio Ortega dijo haber visto en tiempo del Gobierno Español al padre de Eugenia Huerta (Patricio Huerta) ocupando el terreno al oeste del de Ortega; y Manuel Villanueva, que en el terreno que el demandante dice pertenecer anteriormente a Marta Candelaria, el (Villanueva) vio a un tal Sanchez, quien, según el testimonio no desmentido del demandante, en contrapruebas, era precisamente sobrino de aquella mujer.

"En vista de lo que se lleva dicho, el demandante tiene derecho de propiedad sobre los lotes de terreno

ocupados y solicitados a titulo de homestead por los demandados Gregorio Luna, Rosalio Vinas, Maximino Lopez, David Sacramento, Isidoro Remetera, Eulogio Arindaing y Policarpo Jardinero, respectivamente, lotes que dejaron de ser del Estado por haberlos-poseido el demandante por si y por sus causantes desde tiempo inmemorial, cuando menos desde 1903.

"Por todas las consideraciones expuestas, se recomienda que se dicte sentencia declarando al demandante con derecho a la propiedad de los referidos siete (7) lotes solicitados y ocupados a titulo de homestead por dichos demandados Gregorio Luna, Rosalio Vinas, Maximino Lopez, David Sacramento, Isidoro Remetera, Eulogio Arindaing y Policarpo Jardinero, respectivamente, lotes que estan comprendidos dentro de la pieza de terreno descrita en el parrafo 2.º de la demanda; y condenando a estos demandados y al demandado Director de Terrenos a restituirlos al demandante, con 7/10 de las costas contra ellos menos el Director de Terrenos; y que sean absueltos de la demanda— los demandados Antonio Ortega y Narciso Sange, con 2/10 de las costas a favor de los mismos y contra el demandante.

"Asi se somete respetuosamente.

"Naga, Camarines Sur, hoy a 11 de julio de 1933. (Fdo.)

"Manuel Flores

"Arbitro

" (Escribano)"

On March 13, 1934 the lower court rendered the following decision:

"Visto el informe sometido por el arbitro nombrado en esta causa, y consideradas las pruebas aducidas por las partes en la misma, se aprueba dicho informe en todas sus partes.

"En su virtud, se dicta sentencia declarando al demandante con derecho a la propiedad sobre los lotes de terreno ocupados y solicitados a titulo de homestead por los demandados Gregorio Luna, Rosalio Vinas, Maximino Lopez, David Sacramento, Isidoro Remetera, Eulogio Arindaing y Policarpo Jardinero, respectivamente, lotes que estan comprendidos dentro de la pieza de terreno descrita en el parrafo 2.º de la demanda; y condenando a estos demandados y al demandado Director de Terrenos a restituirlos al demandante, con 7/10 de las costas contra dichos demandados menos el Director de Terrenos; y absolviendo de dicha demanda a los demandados Antonio Ortega y Narciso Sange, con 2/10 de las costas a favor de los mismos y contra el demandante.

"Asi se ordena.

"Dada en Naga, Camarines Sur, marzo 5, 1934.

(Fdo.) "EULALIO GARCIA

"Juez, Dtcimocuarto Distrito Judicial"

The Director of Lands excepted to the decision of the court, and filed a motion for a new trial on the ground that the decision was not supported by the evidence and was contrary to law, which motion was overruled. The Director of Lands excepted to said ruling, and filed a bill of exceptions, which was approved and forwarded to this court, together with the evidence submitted to the referee.

The other defendants also filed a bill of exceptions, which was approved and forwarded to this court, where they asked for and obtained permission to rely upon the bill of exceptions presented by the Director of Lands.

Plaintiff also perfected a bill of exceptions, but his appeal was dismissed on November 13, 1934 because of his failure to file his brief within the period provided by the rules of court

The Solicitor-General in representation of the Director of Lands and the attorneys for the other defendants make

the following assignments of error:

"I. The lower court erred in admitting and considering Exhibits B, C, D, E, F, G, H, I/J, K, and M of the plaintiff-appellee.

"II. The lower court erred in declaring that with the exception of the lot occupied by the defendant Antonio Ortega, the parties agree on the identity of the land in question.

"III. The lower court erred in holding that the great difference between the sketch Exhibit A and sketch Exhibit 4 is due merely to the fact that Exhibit 4 was made by a qualified surveyor while the other was made by one who is not a surveyor.

"IV. The lower court erred in holding that the land claimed by the plaintiff-appellee and described in paragraph 2 of the complaint is made up of five portions indicated in Exhibit A and were acquired by the plaintiff-appellee by purchase from Eugenia Huerta, Fabiana Arejola, Juana de Dios, Nemesio David, and Antonio San Jose, and in condemning the appellant homesteaders to deliver the possession of the land they are respectively occupying to the plaintiff-appellee.

"V. The lower court erred in declaring that the lots occupied by the defendant-appellants Gregorio Luna, Rosalio Viiias, Maximino Lopez, David Sacramento, Isidoro Remetera, Eulogio Arindaing, and Policarpo Jardinero are the private property of the plaintiff-appellee and in not holding that said lots are part of the public domain.

"VI. The lower court also erred in admitting the testimony of Sotero Platon with respect to the supposed segregation of public lands from private lands in 1894 and in holding in effect that the land in question was possessed by plaintiff-appellee's alleged vendors at the time of that supposed segregation.

"VII. The lower court erred in not giving due weight and consideration to the decision of the Director of Lands.

"VIII. The lower court erred in supposing that Leandro Villanueva did not cut firewood from the land in question under the license issued to him by the Bureau of Forestry.

"IX. The lower court erred in denying the defendant-appellant's motion for new trial."

As we have already stated, the trial of the case was referred with the consent of the parties to the clerk of the court as referee, who rendered his report on July 11, 1933. The report of the referee was approved by the lower court and judgment was rendered in accordance therewith about eight months after the report was filed.

Section 139 of the Code of Civil Procedure provides that upon the completion of the trial, the referee shall report, in writing, to the court the facts found by him and all such of his rulings as the parties shall request him to report; and section 140 provides that upon the filing of the report or as soon as conveniently may be thereafter, the court shall render judgment in accordance with the report, as though the facts had been found by the judge himself, unless the court shall, for cause shown, set aside the report, or order it to be recommitted to the referee for further findings.

Rule 31 of the Rules of Courts of First Instance reads as follows: "Upon the filing of the report of commissioners in partition or expropriation proceedings or of a referee the parties shall be notified by the clerk, and they shall be allowed ten days within which to file exceptions or signify grounds of objection to the findings, if they so desire, unless a different period is fixed by the court."

In the case of *Kriedt vs. E. C. McCullough & Co.* (37 Phil., 474), this court held that section 140 of the Code of Civil Procedure places upon the litigant parties the duty of discovering and exhibiting to the court any error that may be contained in the referee's report; that the proper procedure for the purpose of exhibiting error in the report

of a referee is for the aggrieved party to except to such parts of the report as are alleged to be erroneous; that exceptions to the report of a referee are intended to answer a purpose analogous to the function served by assignments of error in appellate procedure; that such exceptions should be specific, and should be filed after the report of the referee has been brought into the clerk's office and before the report has been adopted by the court and made the foundation of its judgment; that there is a presumption in favor of the findings of the referee but they are not conclusively presumed to be correct, and his conclusions may be set aside if error is shown in a manner conformable with proper practice; that the weight to be attributed to his findings of fact depends largely on the peculiar conditions of each case; that if the report of the referee is alleged to be erroneous by reason of facts which do not appear in the report itself or in the documents or records which were used by the referee, the aggrieved party should make a motion to recommit the report or ask that the error be corrected by the court itself, as the situation may require.

The foregoing decision as to the procedure to be followed in dealing with a referee's report was followed, affirmed, and emphasized in *Santos vs. De Guzman and Martinez* (45 Phil., 646), where it was said that if a party desires to challenge the findings of a referee, he must do so by timely and specific exceptions to the referee's report; that if he fails to make such exceptions and the report is confirmed by the trial judge, he is bound by the findings and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom; that questions relating to the report of a referee can be reviewed only where the record discloses the exceptions taken thereto; that the record in that case failed to disclose if the parties were notified of the presentation of the referee's report; and that though the law is likewise silent on the subject the parties litigant should receive notice of the filing of the report of the referee so that they may, if they so desire, take exceptions thereto.

In the foregoing cases it was held that notice of the filing of the referee's report must be sent to the parties for the purpose of giving them an opportunity to present their objections.

Although it is true that in the present case the record does not affirmatively show that such notice was sent to the parties, it is also true that the referee's report was filed almost eight months before the lower court acted on it. In the absence of any evidence to the contrary, it is to be presumed that the clerk of the court performed his duty and notified the parties of the filing of the referee's report. Furthermore, the report of the referee was not acted on by the lower court until almost eight months after it had been filed. The parties therefore had more than ample time in which to file their objections thereto. (*Santos vs. De Guzman and Martinez*, supra; *Government of the Philippine Islands vs. Ossorio*, 50 Phil., 864.)

The case of *Baltazar and Limpin vs. Limpin and Pirector of Lands* (49 Phil., 39), is to be distinguished from the present case. In that case the referee made an inspection of the land in controversy and rendered a report favorable to the applicants. No timely and specific exceptions to the referee's report were taken. Instead, without any further proceedings, the trial judge handed down a decision in which he concurred in part with the report of the referee and dissented in part from the report. From that decision the applicants, who were favored by the report of the referee but were not favored by the decision of the trial judge, - appealed to this court. In that case the doctrine of *Kriedt vs. E. C. McCullough & Co.* and *Santos vs. De Guzman and Martinez* was reaffirmed. It was held, however, that the trial judge retained a discretion to accept the report of the referee in part and set it aside in part or reverse it entirely even where no exceptions to the referee's report were taken, and the case then under consideration was distinguished from the aforementioned cases, because the trial judge had not confirmed the report of the referee in its entirety, but had set it aside in part.

In the present case the lower court, after considering the referee's report and the evidence presented by the parties, adopted the findings of the referee and approved the report in its entirety. The defendants took no exception to the report, and as was held in the case of *Santos vs. De Guzman and Martinez*, supra, they are bound by the findings

and cannot be heard to dispute their truthfulness or escape the legal consequences flowing therefrom. Since we are required to accept the findings of the referee, which were adopted by the lower court, the decision appealed from must be affirmed.

For the foregoing reasons, the decision of the lower court is affirmed, without a special pronouncement as to costs in this instance.

Avanceña, C.J., Hull, Goddard, and Diaz, JJ., concur.

Judgment affirmed.

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