

THE PROVINCE OF CAMARINES SUR, APPLICANT, VS. THE DIRECTOR OF LANDS, OPPOSITOR AND APPELLEE. CIRIACO CHUNACO AND JOSE ARAMBURO, OPPOSITORS AND APPELLANTS.

G. R. No. 43361. August 21, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

On February 12, 1930, the Province of Camarines Sur, thru its provincial fiscal, filed with the Court of First Instance of said province an application for the registration of several parcels of land comprised in the agricultural school site of the province. The Director of Lands opposed the registration on the ground that these parcels are public lands. An opposition was also filed on January 19, 1931, by Ciriaco Chunaco but only with respect to lot No. 3 of Plan 11-12638, Amd., Exhibit A. Jose Aramburo, who had sold this lot to Ciriaco Chunaco, joined the latter on account of his warranty in case of eviction.

The present controversy relates only to lot No. 3 as the other parcels of land had already been adjudicated by the Court of First Instance of Camarines Sur to the applicant and the Insular Government. The parties appear to have agreed upon the identity of the controverted lot (t. s. n., pp. 15, 147).

After hearing, His Honor, Judge Eulalio Garcia, on October 29, 1934, denied the application of the Province of Camarines Sur, overruled the opposition of Ciriaco Chunaco and Jose Aramburo, and declared lot No. 3 public land which had been reserved by the Governor-General on October 19, 1933 for use as site of the Camarines Sur Agricultural School. The oppositors, Ciriaco Chunaco and Jose Aramburo, moved for reconsideration and new trial which motion was denied. Exception was taken and the case finally elevated to this court by bill of exceptions.

Oppositors by their counsel assign ten errors all of which, however,—with the exception of the last one with reference to the alleged error in refusing a new trial—may be reduced to one single proposition, namely: Whether or not upon the evidence presented, the court below erred in declaring lot No. 3 public land subject to reservation by the Chief Executive for the stated public purpose, instead of adjudicating the same and ordering its registration in the name of the oppositor-claimant Ciriaco Chunaco.

Appellants claim that they and their predecessors in interest have been since time immemorial in the continuous, open, peaceful and adverse possession of lot No. 3 under a bona fide claim of ownership and that, therefore, they are entitled to the registration of the same under the provisions of Act No. 496 or, in the alternative, under the beneficial provisions of Act No. 926, section 54, paragraph 6, and Act No. 2874, Chapter VIII, section 45, paragraph (b), respectively.

The appellants called to the witness-stand eight witnesses to substantiate their claim. Documentary evidence was also presented and admitted (Exhibits 1 to 23). No claim is made that the lot had been acquired either by purchase from or composition title with the Government (Royal Decree of June 25, 1880). No step was even taken towards securing possessory information title under the Royal Decree of February 13, 1894 and the provisions of .the

Spanish Mortgage Law of July 14, 1893. The appellants, therefore, cannot invoke the provisions of section 19, paragraph 3, of Act No. 496, as amended by section 1 of Act No. 2164, which require that an applicant for registration of title must claim "to own or hold any land under a possessory information title, acquired under the provisions of the Mortgage Law of the Philippine Islands and the general regulations for the execution of same." (Fernandez Hermanos vs. Director of Lands, 57 Phil., 929, 933.) The failure of the appellants' predecessors in interest to legalize their possession of the land in question by the institution of possessory information proceedings for the gratuitous grant of title from the Spanish Government, thereby perfecting and converting their possessory right into one of ownership, caused the land to revert to the Government. (Fuster vs. Director of Lands, G. R. No. 40129, 61 Phil., 1015; Li Seng Giap & Co. vs. Director of Lands, 59 Phil., 687; Heirs of Datu Pendatun vs. Director of Lands, 59 Phil., 600.) In the first cited case, this court said:

"No existe en autos prueba alguna que demuestre que Severino Tamayo y Juan de la Cruz, ni sus companeros, hayan solicitado la composicion de los terrenos en controversia de acuerdo con el meneionado Reglamento, cuyo objetivo era precisamente el kgitimar la posesion de los que poseian ilegitimamente terrenos del Estado, ni de que se hayan acogido a los benefieios del Real Decreto de 13 de febrero de 1894 que tenia por especial fin dar una vez mas oportunidad a dichos poseedores a que pudiesen obtener titulo gratuito previos los tramites de informacion posesoria, ni tampoco a los del Real Decreto de 21 de febrero de 1895. Si fuera cierto, como la solieitante apelada Antonia C. Fuster ha tratado de probar, que Severino Tamayo y Juan de la Cruz y companeros hubieran estado en posesion continua del referido terreno y lo hubieran estado cultivando por medio de inquilinos hasta que traspasaron sus derechos sobre el mismo a Matias Fuster el 15 de mayo de 1895 (Exh. I), no se comprende c6mo no se habian acogido ni a los beneficios del Real Pecreto de 25 de junio de 1880, para lo cual tenian tiempo hasta el 17 de abril de 1894, ni a los beneficios del Real Decreto de 13 de febrero de 1894, ni a los del Real Decreto de 21 de febrero de 1895, para legitimar su posesidn y adquirir titulo gratuito de propiedad sobre dicho terreno. Si hubiesen estado tan empeiiados e.interesados en cultivar el citado terreno, hasta el extremo de poner encargados en el, ipor que no pusieron el mismo empeno e interes en legitimar su posesion, y adquirir titulo gratuito de propiedad sobre el mismo, aprovechandose de la oportunidad y de los medios que las leyes les brindaban para ello y asegurando de este modo el fruto de sus desvelos, trabajo y privaciones? No se pretende que no habian tenido conocimiento de dichos reales decretos; por consiguiente, es de presumir que se ha cumplido con lo ordenado en el articulo 17 de Reglamento tantas veces citado de que se diese la mayor publicidad al mismo en las Islas a fin de que se conocieran las f acilidades que por sus disposiciones se daban para legitimar la posesidn ilegal de terrenoa del Estado y adqiuirir la propiedad de los mismos." (Fuster vs. Director of Lands, supra.)

The appellants, however, also invtoke the benefits of paragraph 6 of section 54 of Act No. 926, as amended by paragraph (6) of section 45 of Act No. 2874 and contend that they and their predecessors in interest had possessed the land not only "for a period of ten years next preceding the 26th day of July 1904" as said Act No.' 926 provides, but from the year 1874. They claim that the repeal of Act No. 926 by Act No. 2874 cannot adversely affect their vested right of ownership under the former Public Land Law because of the constitutional inhibition against the enactment of ex post facto law or bill of attainder. In the first place, it should be observed that the constitutional provision that no ex post facto law. or bill of attainder shall be enacted cannot be invoked to protect allegedly vested civil rights, because it is only applicable to criminal proceedings, and not to civil proceedings which affect private rights retrospectively (See Mekin vs. Wolfe, 2 Phil., 74; Paynaga vs. Wolfe, 2 Phil., 146; U. S. vs. Ang Kan Ko, 6 Phil., 376; Concepcion vs. Garcia, 54 Phil., 81; and U. S. vs. Heinszen, 206 U. S., 370; 51 Law. ed., 1098; 27 Sup. Ct. Rep., 742; 11 Ann. Cas., 688). In the second place, section 54 of Act No. 926 provides that. "** * * persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuance of a certificate of title therefor * * *." No application was filed under Act No. 926 by the appellants or their

predecessors in interest, and it is clear that without such application no confirmation of their claims could be had and much less the issuance of a certificate of title in their favor. Under these circumstances, no vested right could have accrued to them.

The claim that the appellants should, in the alternative, be the recipients of the beneficial provisions of Act No. 2874 (par. [6], sec. 45) is also without merit. Paragraph (b), section 45 of Act No. 2874 substantially incorporates paragraph 6 of section 54 of Act No. 926. The possession and occupation under both laws must not only be under a bona fide claim of ownership but must also be open, continuous, exclusive and notorious to give rise to a presumptive grant from the State;

It has been uniformly held by this court that to justify judicial confirmation of title to a public agricultural land, the claimant must prove actual and physical occupation of said land, and that the possession must be continuous, open, exclusive, notorious, adverse and under a bona fide claim of ownership from July 26, 1894 (*Tiglao vs. Insular Government*, 7 Phil. 80, *aff'd* in 215 U. S., 410; 54 Law. ed., 257; 30 Sup. Ct. Rep., 129; 40 Phil., 1029; *Vafio vs. Insular Government*, 41 Phil., 161; *Government of the Philippine Islands vs. Abadejos*, G. R. No. 21184, March 12, 1924; *Gallado vs. Director of Lands*, G. R. No. 23109; *Fernandez Hermanos vs. Director of Lands*, *supra*; *Heirs of Datu Pendatun vs. Director of Lands*, *supra*; *Director of Lands vs. Abarca and Enage*, G. R. No. 38277, 58 Phil., 950; *Director of Lands vs. Abdul*, G. R. No. 36867, 58 Phil., 932; *Government of the Philippine Islands vs. Agta*, G. R. No. 86479, 57 Phil., 979) up to the date of the filing of the application or at least up to July 1, 1919 when Act No. 2874 was enacted (*Ongsiaco vs. Magsilang*, 50 Phil., 380; *Government of Philippine Islands vs. Adelantar*, 55 Phil., 703; *Government of the Philippine Islands vs. Abadejos*, *supra*; *Government of Philippine Islands vs. Abad*, 56 Phil., 75). If the possessory right has been enjoyed in the manner set forth in the foregoing cases, it ripens into one of presumptive ownership. The appellants, to be sure, attempted to prove the elements of the required possession. We find, however, the evidence on this point unsatisfactory. Their witnesses Timoteo Velasco, Jose Bantugay, Mariano Berba and Felix Bolayon testified that the original owner of the land in question was one Juan Garay who, according to the first witness, had possessed the land since 1874; that during the period of the possession of Garay the land had been dedicated to the planting and cultivation of abaca, coconuts, rice, corn, camotes and other plants, as well as to the pasture of cattle and carabaos, and that Garay employed encargados and day-laborers (*jornaleros*) for the purpose. But their own testimony shows that the possession of Juan Garay did not last long enough as he left the Philippines before the revolution against Spain and died while away. And while the possession of Garay might have passed to Ceferino Aramburo, father of the appellant, Jose Aramburo, it does not appear when said Ceferino Aramburo, who died in 1899, began to occupy the land in question or any portion of it. The record is notably deficient of proof both of the exact commencement of possession and its continuity. As a matter of fact, the appellant Jose Aramburo himself admits this lack of continuity of possession when, upon cross-examination by counsel for the Government, he testified that when his father died in 1899, the time when he was supposed to have inherited the land in question, he was then in Spain and came to the Philippines only in 1911 or 1912 (t. s. n., p. 162) and actually saw and took possession of the land only in 1913 (t. s. n., p. 158). Upon the testimonial evidence presented we cannot give weight to their alleged possession through their encargados. While Timoteo Velasco testified that Ceferino Aramburo had as encargados Petronilo Guevara, Mariano de las Llagas and Manuel Pelayo (t. s. n., pp. 5, 6), Mariano Berba who also testified for the appellants declared that Petronilo Guevara was Garay's encargado (t. s. n., p. 166). Another of the appellants' witnesses, Felix Bolayon, contradicted this assertion of Mariano Berba that Petronilo Guevara served under Garay by stating that Garay's encargado was his uncle, Estanislao Gonos (t. s. n., p. 173). Furthermore, the appellant Jose Aramburo who took possession of the land only in 1913 declared that after the death of Petronilo Guevara, he named Manuel Pelayo as encargado (t. s. n., p. 152), thus discounting the statement of Timoteo Velasco who, as stated, expressly included one Mariano de las Llagas among the

encargados of Joee Aramburo. Again, the witness Timoteo Velasco admitted that he lived near the land in question only up to 1902 (t. s. n., p. 4), and we are at a loss to understand how he could affirm that he knew Petronilo Guevara and Manuel Pelayo to be encargados of Jose Aramburo when by the testimony of the latter, Petronilo Guevara and Manuel Pelayo only became his encargados in 1913. Manuel Pelayo who also took the witness stand for the appellants positively declared that he only knew the land in question in 1922 and remained therein for only two years up to 1924 (t. s. n., p. 130).

The appellants' claim of ownership, therefore, fails for lack of sufficient proof of continuity of possession on their part or on the part of their predecessors in interest during the time required by section 45, paragraph (6), of Act No. 2874. (Heirs of Luno vs. Marquez, 48 Phil., 855; Government of the Philippine Islands vs. Heirs of Abella, 49 Phil., 574, 380; Fernandez Hermanos vs. Director of Lands, supra.)

No competent or satisfactory evidence was presented by the appellants to establish the privity of title or possession between Garay, the alleged original owner, and Ceferino Aramburo, his alleged successor in interest. Antonio Gaya and Leopoldo Terran testified that in the year 1900, upon the arrival of the Americans in the Philippines, the house of Ceferino Aramburo, deceased father of the appellant Jose Aramburo, together with several other houses in the town of Daraga, Albay, were set on fire by order of one General Pawa, a revolutionary leader, thus reducing to ashes the said house of Ceferino Aramburo and the safe therein kept by the latter to shelter the papers and documents relating to his property. With respect to the testimony of these two witnesses, however, the trial court observed:

"* * * Estos testigos Antonio Gaya y Leopoldo Terran, tampoco han afirmado que habian visto y leído el documento o titulo a nombre de Ceferino Aramburo del terreno en cuestion; si fuera verdad haberse quemado el documento del terreno en cuestion, la existencia del supuesto titulo que se alega haberse quemado en un incendio que tuvo lugar el año 1900 en el Municipio de Daraga, Albay, era muy facil comprobarlo por los medios siguientes: 1.º—Por una copia de la escritura que indudablemente se podria hallar en el protocolo del notario publico que intervino en la redaccion y otorgamiento de dicho documento; 2.º—La naturaleza y relation de los documentos de Ceferino Aramburo que se alegan haber sido destrozados por el incendio; y 3.º—Por los testigos que intervinieron en la esidn en pago de una deuda de Juan Garay a favor de Ceferino Aramburo." (B. E., pp. 16, 17.)

After rendition of judgment by the lower court, appellants filed a motion for a new trial on the ground of newly discovered evidence, the evidence consisting of documents said to have been found in the archives of the National Library. The nature and character of these documents were not even mentioned to apprise the court of their importance and value and the lower court denied the motion. On appeal to this court, announcement is made by the appellants in their brief that a motion for a new trial would be filed because of the discovery of documentary evidence, but up to this time no such motion has been received.

The trial court, in declining to accept the explanation of witnesses for the oppositors regarding the alleged destruction of papers and documents pertaining to the property in controversy, contrary to the contention of counsel for the oppositors-appellants, did not apply the statute of frauds (sec. 385, Code of Civil Procedure) but followed the ruling of this court in the cases of Director of Lands vs. Abarca and Enage, supra, and Director of Lands vs. Abdul, supra. In the first case, this court said:

"The claimant did not testify, but his attorney presented two witnesses, Estanislao de la Cruz and Higino Enage, aged 50 and 56, respectively, to show that the lot in question formerly belonged to Eleno de la Cruz, and that it was purchased from him by Emeterio Enage, the father of the claimant, but it is dear from their testimony that this land, or rather a part of it, was in the possession of Emeterio Enage when they first knew it. No competent evidence was offered to show that Emeterio Enage acquired this lot from Eleno de la Cruz, nor does the evidence show with any certainty when Emeterio Enage, who died in 1910, began to occupy a portion

of the land in question." And in the second case, this court held:

"There is absolutely no documentary evidence that Gigling himself ever obtained title to the property, and there is no proof that he had had possession for a time sufficiently long to justify the court in awarding ownership to him. There is no document crediting that the interest of Gigling was ever conveyed to Conway. It results that the action of the trial court in awarding the lots mentioned to James Conway was erroneous. The mere fact, relied upon by the appellee, that the Province of Lanao, through its division superintendent of education, offered to buy the claim of Conway to these lots from his administrator is of no value as proof of title."

Even the evidence respecting the alleged possessory acts exercised by the appellants' predecessors in interest and their agents is conflicting. Whereas some of their witnesses testified that the controverted parcel had been dedicated by the original owner thereof and his alleged immediate successor in interest to the cultivation of abaca, coconuts, rice, corn, camotes and other plants, others, more particularly the appellant Jose Aramburo himself, declared that the land had never been dedicated to anything else except cattle grazing (t. s. n., p. 152), and that the earth dikes (pilapiles) and irrigation canals did not really exist until after 1918 when the Government Agricultural School of Camarines Sur actually took the physical and material occupation and possession of the land, and began to improve the same (t. s. n., pp. 10, 99, 106, 110, 111, 113-117, 142). "While grazing live stock over land is of course to be considered with other acts of dominion to show a possession, the mere occupancy of land by grazing live stock upon it, without substantial inclosures or other permanent improvements, is not sufficient to support a plea of limitations, and this is especially true where the claimant used no means to restrain the live stock to any particular land, or where the live stock of others was not excluded from the land. Such a use, it has been said, is to be deemed merely permissive, whether the lands are public or private, and may be terminated at any time." (2 C. J., pp. 67, 68.) And in the case of *Director of Lands vs. Absolo* (46 Phil., 282), it was held:

"The mere fact that during the Spanish regime one had made on public land some inclosures for his cattle and cottages for his shepherds and said cattle had been pasturing thereon for a number of years, and said shepherds cultivated a small portion thereof for a like period, is not a possession under claim of title, when it appears that he did not break up any ground, or bring the land to a state of cultivation and the cattle of other people grazed thereon, just as his cattle did, and the cultivation of the land by his shepherds was not permanent but casual and stopped as soon as said shepherds ceased to live on the land on account of all the cattle having perished." (Syllabus. See also *Roman Catholic Bishop of Lipa vs. Municipality of Taal*, 38 Phil., 367, 372.)

Counsel for the appellants vigorously assert in their brief that the Province of Camarines Sur and the Insular Government had recognized the ownership of the appellants of the land in question by the assessment thereof three times by the provincial assessor of Camarines Sur in the name of Jose Aramburo. Assessment alone, however, is of little value as proof of title. Mere tax declaration does not vest ownership of the property in the declarant (*Evangelists vs. Tabayuyong*, 7 Phil., 607; *Casimiro vs. Fernandez*, 9 Phil., 562; *Elumbaring vs. Elumbaring*, 12 Phil., 384). Neither is the alleged offer (Exhibit 7, p. 37, rec.) made by the provincial governor to buy the claims of the appellant Jose Aramburo any concession or evidence of ownership (*Director of Lands vs. Abdul*, supra); nor does the issuance of a certificate of repurchase by the provincial treasurer of Camarines Sur in favor of Jose Aramburo upon the redemption payment of the accrued taxes on the land up to 1929 vest in him any title or operate as an estoppel against the Government. The repurchase certificate was "issued with the understanding that it does not acknowledge a better right to the properties being redeemed by said Jose Aramburo than that had by their former owners prior to the forfeiture thereof and without prejudice to the right of the Government to contest the title thereto, if deemed necessary, in proper proceedings." (Exhibit 6, p. 36, rec.) Furthermore, the purchaser of land forfeited by the Government for nonpayment of taxes only acquires the interest held by the delinquent owner, and the Government is not deemed to have included in the conveyance the title which it holds over the land. (*Government of the Philippine Islands vs. Adriano*, 41 Phil., 112.)

The decision of the trial court, being on the whole supported by the evidence on record, is hereby affirmed, with costs against the appellants. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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