

MANUEL RODRIGUEZ, APPLICANT AND APPELLANT, VS. DANIEL TIRONA ET AL., OPPOSITORS AND APPELLEES.

G.R. No. 45374. May 27, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Two questions are involved in this appeal: the first is whether after nineteen years from the issuance of a decree of registration, the plan of the registered land may be amended so as to segregate therefrom a portion claimed by an adjoining owner; and the second is whether after the lapse of the same period of time, a writ of possession of the registered land may be issued.

Lot No. 1127 of the appellant Manuel Rodriguez and lot No. 1128 of the appellee Daniel Tirona were surveyed in 1909 and 1910, respectively.

It is alleged that on March 18, 1911, both parties signed an agreement made in a public document, whereby they agreed that the boundary and at the same time monument of their respective lands be an embankment (pilapil) found south of the land of the herein appellant. Both parties made a mutual conveyance of the portion of land which has been taken from their respective properties as a result of the survey.

In 1915 the cadastral hearing in the Municipality of Cavite took place. Neither of the parties amended the plan of the said two lots to determine the dividing line between them. Neither did they file the alleged agreement in court for the purpose of enforcing the same.

On March 18, 1915, lot 1128 was adjudicated to the spouses Daniel Tirona (appellee) and Felisa Osorio; on October 28, 1916, the corresponding decree was issued, and on November 20th of the same year, the original title was issued in favor of said spouses Daniel Tirona and Felisa Osorio, now deceased, and in her place, her only son, Rodolfo Tirona (the other appellee).

Nineteen years thereafter, that is, on December 17, 1935, the appellant put in a motion, which was supplemented by another dated January 8, 1936, wherein he asked the court to approve the subdivision plan filed by him of lot 1128 of the appellees, which lot was subdivided into two: lot 1128-A containing 11,575 square meters, which is the portion claimed by the appellant, and lot 1128-B which belongs to the appellee Tirona according to the appellant. The portion claimed, which is triangular in form, is north of the embankment (pilapil) aforementioned, and is included in the land described in the original certificate of title issued to the spouses Daniel Tirona and Felisa Osorio. The appellant's claim consists in that under the agreement the embankment is the true dividing line between both lands¹ and not that fixed in the plan which served as the basis for the issuance of the decree and the original certificate of title in favor of the spouses Tirona. The appellees opposed the motion and the court denied it by its order of January 17, 1936 which was appealed.

From this statement of facts it will be seen that the appellant's claim to the indicated portion of land is utterly indefensible, even assuming as true, which the appellees deny, that there had been a valid agreement fixing the

embankment (pilapil) as the dividing line between the appellant's land and that of the appellees. In view of the fact that the plans, both of the appellant and of the appellee Tirona, have not been amended after the execution of the aforesaid agreement; that the appellant has filed no opposition to the appellee's application for registration in order to exclude from the latter's plan any portion of land which, under the agreement, belonged to the appellant, and that the appellant has neither filed a petition for review within the statutory period of one year to set aside the decree of registration, it is obvious that the appellant has lost his right, if he had any, to ask for the amendment of the plan of the appellees' land, or to claim the portion of land which he alleged to be his by virtue of the said agreement.

The appellant contends that the only purpose of his motion was the approval of the subdivision plan of lot 1128; the cancellation of the original certificate of title to said lot, and the issuance in lieu thereof of two new certificates of title, one in the name of the appellant for the portion of land claimed by him, and another for the remaining land in favor of the appellees. He also alleges that he does not seek the revision of the decree of registration referring to said lot 1128, because his motion is not based upon any fraud on the part of the appellees, but upon the fact that, through error, the original certificate of title in favor of the appellees includes a land belonging to the movant, hence, the said certificate should be corrected.

We do not believe that there is any error in the original certificate of title issued to the appellees because the said certificate, with respect to the description of the land, is strictly in accordance with the decree of registration, and the decree of registration is in accordance with the description of the appellees' plan. What happened is the omission or negligence on the part of the appellant to ask for the amendment of his own plan and that of the appellees so as to avail himself of his rights under the agreement allegedly executed by and between both parties. The amendment of the appellees' certificate of title, if presently decreed, as a result of the segregation of a portion of the land described in their certificate, would in truth mean the revision and amendment of their decree of registration, and such revision would be illegal in view of the lapse of more than nineteen years from the issuance of the decree. Whether by reason of fraud or otherwise, we believe that any legal action has prescribed to review, alter or amend the decree of registration issued in favor of the appellees.

In *De los Reyes vs. Paterno* (34 Phil., 420), this court held that the plaintiff, having failed to present his objection to the registration of the parcel of land there in question, or to question the validity of such registration within a period of one year after the certificate of registration had been issued, had forever lost his right in said land, even granting that he had any right therein.

The other appealed order is that issued by the court on February 13, 1936, whereby it held that it had jurisdiction to pass upon the motion of the appellees dated January the 6th.

While the motion of the appellant to amend the plan of the appellees was pending resolution, the latter, in turn, filed the said motion of January 6th, wherein they alleged that the appellant Manuel Rodriguez and Juan Salcedo and their tenants were molesting the appellees in the possession of their lot 1128 and were occupying the greater part of said lot. They, therefore, asked the Court to issue a writ of possession in favor of said movants so that they could freely hold the said portions illegally occupied by the appellant, which portions are indicated in the relocation plan of lot 1128 and are marked as lot A containing 10,764 square meters and lot B containing 817 square meters.

The appellant Manuel Rodriguez opposed the motion and the Court denied it by its order of January 17, 1936. But upon the subsequent filing of an amended motion, the court by its order of February 13, 1936, held itself competent and with jurisdiction to pass upon the said amended motion for writ of possession, from which order Manuel Rodriguez appealed.

Under the provisions of section 17 of the Land Registration Act, it is undeniable that the court of first instance, in a land registration case, may enforce its orders and decisions as in civil cases, and may issue a writ of possession. But considering that the writ of possession, in land registration cases, is only issued against the defeated oppositors, and in the present case the appellant Manuel Rodriguez was not a party in the case as an oppositor against the registration applied for by the appellees, the writ of possession does not lie against him. The proper and adequate remedy in this case is an ordinary action. (Manuel vs. Rosauero, 56 Phil., 365; Manlapas and Tolentino vs. Llorente, 48 Phil., 298.)

The appealed order of January 17, 1936, is affirmed and that of February 13, 1936 is reversed, without costs. So ordered.

Avanceña, C. J., Villa-Real, and Imperial, JJ., concur.

Laurel, J., concurs in the result.

Moran, J., concurs in the dispositive part.

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