

THE SEMINARY OF SAN CARLOS, BY PEDRO JULIA, RECTOR OF THE SEMINARY OF SAN CARLOS OF CEBU, PETITIONER AND APPELLEE, VS. THE MUNICIPALITY OF CEBU, OPPONENT AND APPELLANT.

G.R. No. 4641. March 13, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

The petition in this case, made by the Seminary of San Carlos, asks for the registration of two pieces of land, included in one plan, petitioner's Exhibit J, located in the city of Cebu, alleging as its source of title a royal cession from the King of Spain.

The opponent of the registration, the city of Cebu, denies the title of the petitioner and alleges in itself ownership of the land in question, stating that its title is based upon possession thereof of the kind and for the period required by law to effect a title by prescription.

The petitioner succeeded in the court below and a judgment was entered declaring it the owner of said land and ordering the same registered in its name. The opponent made a motion for a new trial upon the ground that the decision was clearly against the evidence and was contrary to law. This motion was denied and the opponent duly excepted and perfected its appeal to this court.

The land in controversy is situated in the city of Cebu. It is claimed by the seminary that it includes a portion of one of the public squares of that city. Aside from that of the ownership of the land, there are two questions raised on the trial and presented for review on this appeal. The first one relates to the quantity of the land claimed by the seminary, and the second to its precise location. The claim of the city is that, even admitting petitioner's ownership of the land described in its muniments of title, still the city must have a judgment in its favor for the reason that, from the description presented in said muniments, it appears clearly that the land in question does not extend into or include any portion of the plaza occupied by the city. The city asserts that there is, and for many years has been, a well-defined boundary, formerly a wall, latterly an iron fence (*enverjada*), separating from the public square the land upon which stands the church belonging to the seminary, and that the lands mentioned and described in the documents of title presented by the seminary lie between the church and the iron fence and do not, therefore, extend into the plaza.

The land in dispute in this case admittedly lies to the south of the church belonging to the seminary. This church, according to the plans and the evidence, is located upon a plot of ground adjoining the public square on its north side. So that the land in question, if it does not extend into the plaza, necessarily lies between it and the church. This clearly appears from the plan, Exhibit J, presented by the petitioner and is a fact undisputed in the record.

The first question to be determined, then, is whether the land in question lies within the inclosure, the southern boundary of which is formed by the iron fence, or whether it or any portion of it lies beyond said fence, thereby including a portion of the land used as a public square. The problem as to the quantity of the land will resolve itself at the same time with the determination of the present question.

The petitioner has introduced in evidence in this case certified copies of two documents, the one, Exhibit E, bearing date the 12th day of November, 1783, and the other, Exhibit F, of date the 4th day of May, 1784. These documents contain the acts and manifestations of the Audiencia de Manila performed and made for the purpose of formally delivering the property which, by royal decree previously published, had been transferred from the ownership of the expatriated Jesuits to that of the Seminary of San Carlos, or its antecessor. These actuaciones present inventories of all the property thus transferred to the seminary, among such property being: the lands in question. Each one contains a description of such lands. The description contained in Exhibit E is:

"Siguese una huerta grande que esta al lado de la Iglesia hacia el sur, tiene de largo cuarenta y nueve brazas castilianas y de ancho treinta y ocho brazas."

The description contained in Exhibit F of that which was intended to be the same property is:

"Ciudad. Primeramente. Dos solares vacios por no vivir en ellos persona alguna lindan por la parte del norte con la Iglesia que era de dichos regulares la que al presente sirve de Catedral contiguos a dicha Iglesia; por la del sur con la Plaza de la Real Fuerza del San Pedro y casa Real; por la del este con la Marino inmediatos a ellos; y por la del oeste calle en medio para dicha casa Real con dos solares, que asimismo pertenecian a dichos regulares y en uno de dichos solares, so halla plantada la casa de mi dicho castellano Don Manuel Ignacio del Corro. El motivo por que dichos dos solares se hallan vacfos, es por que los habian ocupado los anunciados regulares con una huerta que tenian la que en el dia ya no existe."

Exhibit E gives the following as indicating the size of said lots:

"Diez y nueve solares y medio de a veinticinco brazas en cuadro cada solar entero que se hallan los quince y medio en la plaza de esta referida ciudad, y las cuatro restantes en la Isla de Tinago."

In dealing with the question whether or not the above descriptions include a portion of the public square or plaza, we must not lose sight of the fact, already noted, that the city of Cebu asserts that the lands described by these exhibits lie between the church building and the iron fence to the south of the church, which iron fence marks, as the city alleges, the termination of petitioner's land and the beginning of the opponent's. Looking at the plan of the lands in question, Exhibit J, we observe that the church building is somewhat close to the iron fence (line A B), being in one place less than 4 meters distant, in another less than 116 meters, and in another less than 21 meters. Now, if the limits of the lands lying in front of the church and between it and the iron fence should be continued so that they would extend as far east and west as does the line A B, and then lines should be drawn to inclose the land thus comprehended between the church and the line A B, there would be within that inclosure all of the land which the city claims is described by the petitioner's muniments of title. Simple arithmetic will determine whether the city's contention in this regard is correct or not. The line A B, which is the southern boundary of the land thus inclosed, is 87.40 meters long. The north boundary line of said land is, under the city's contention, the line of the walls of the church building. From the plan it will be readily seen that said line is very broken, following, as the city claims it does, the walls of the church. The strip of land inclosed as above set forth, therefore, varies in width, growing narrower as the walls of the church approach the iron fence and wider as they recede from it. At its widest place it can not exceed, as we have before seen, 21 meters. In some places it is less than 4 meters wide, and in still others less than 16. This being so, it will be more than fair to the contention of the city to assume, for the purposes of a mathematical demonstration, that the strip of land comprehended between the church and the iron fence (line A B) is 87.40 meters long and 21 meters wide. The area of the strip is, therefore, 1,835.4 square meters. This is in reality a larger area than any piece of land lying between the church and the iron fence could possibly have, and, therefore, as we have before said, our assumption is more than fair to the city's contention. Now, if we take the description of land as found in one of the petitioner's exhibits wherein it speaks of it being 49 Spanish brazas long and 38 Spanish brazas wide, we have a parcel of land containing more than 4,000 square

meters, or more than twice the size of the largest parcel that could possibly be contained between the church and the iron fence. If, on the other hand, we take the description as it is found in the other exhibit of the petitioner, wherein the land is described as two parcels of land, each 25 brazas square, we readily see that such a parcel of land could not possibly be contained between the church and the iron fence, as its area would be more than 3,000 square meters. Inasmuch as the strip of land comprehended between the church and the iron fence could not, as we have seen, contain more than 1,835.4 square meters, it is, therefore, evident that the land described in petitioner's exhibits far exceeds in extent that lying between the church and the iron fence; and such land must, therefore, extend beyond the iron fence into what is known as the public plaza, it being admitted that the iron fence marks the northern boundary of said plaza.

The correctness of the plan, Exhibit J, as presented by the petitioner, has not been impugned by the evidence in any manner which is beneficial to the city. There appears to be a large difference between the amount of land as described in one of the petitioner's exhibits and that included within the plan, the latter containing considerably less than the amount set out in the description in said exhibit. Apart from this inconsistency, an inconsistency by which the city seems to profit, the correctness of the plan is not questioned in the record. As to the discrepancy existing between the amount of land as described in the other exhibit of the petitioner and that presented by the plan, the difference is so slight as to be substantially negligible. The land described in the plan contains 3,576 square meters; while under the description in petitioner's Exhibit F the land contains about 3,494.4 square meters, a difference of only 82.4 square meters.

Even though what we have already said be taken in its broadest sense, it does not entirely dispose of the city's contention. Even though it be admitted, as we have found, that the land shown by petitioner's muniments of title, to have belonged once to it includes a portion of the public square referred to, the query naturally suggests itself, how much of the plaza does it include. While we have already intimated that the amount of the public square included in the description of petitioner's land is so much thereof as is described in the plan Exhibit J, such intimation, embracing, as it does, a conclusion from facts not presented, needs some explanation to make it clear; for, even though it be conceded that such land extends into the public square, still it will be found to extend thereinto more or less, depending upon whether the measurement be taken from the iron fence or from the walls of the church building. In other words, if the measurement be made from the iron fence southward, there will be included more of the square than if it be made from the walls of the church building. It is the city's contention that, in measuring the lands claimed by the petitioner and described in its exhibits, such measurement must be taken from the very walls of the church building and not from the iron fence. For this reason the city asserts that it is one of the vices of Exhibit J that its measurements begin with the iron fence and not the walls of the church, thereby including much more of the public square than would be included if the measurements were taken from the iron fence. In support of this claim the city refers to the wording of the descriptions of the land as shown in the two exhibits, already presented, wherein the land is spoken of as "una huerta grande que esta al lado de la Iglesia hacia el sur" and, also as a parcel of land "linda por la parte del norte con la Iglesia."

We do not believe that this contention is sound. In the first place, under the general rules regulating the construction of words and phrases in cases of this character, the word "church," as used in the description, refers to the land upon which the church stands, and not to the church building itself. In the second place, it is unquestioned that, under the description referred to, the north line of the lands in question, as well as the other lines, is straight, the lots being each 25 Spanish brazas square. But, as we have already seen, the line made by the south wall of the church, which, under the city's contention, would be the northern boundary line of the land in question, is extremely broken and crooked. This is clearly shown by the plan Exhibit J, in which the line of the said south wall presents no less than six angles. It is, therefore, impossible that the northern boundary line of the land in question be the line of the church wall, the one being a straight line and the other a crooked one. Such

lines can not be coincident. For the same reason it would be impossible to determine from which portion of the wall the measurement of the land in question should be taken. Should it be taken from the eastern end of the wall, or from the western end, which is about 15 meters farther south, or from the central portion of the wall, which is about 10 meters still farther south? It is apparent that, if the point of departure for measuring the 25 brazas is to be the wall of the building itself, that point is variable in its location, depending upon which portion of the wall is taken as the point from which the measurement is made. The mere statement of this contention shows its weakness. Lastly: The witness for the city, Sr. Rallos, stated that, in his boyhood, there was, at the south of the church and at a considerable distance therefrom a wall which ran along the premises upon which the church was located, forming, apparently, the southern boundary line thereof; that between that wall, the place of which was later taken by the iron fence several times referred to, and the fence which surrounded the monument of Magellan there intervened a distance of from 25 to 50 brazas. The wall referred to by the witness is clearly not the wall of the church building. It appears from his testimony also that the paseo de Dolores was located to the south of the wall or iron fence; and that, therefore, the land in dispute, which includes said paseo, could not have been located between the church building and the iron fence. The same facts appear from the testimony of other witnesses of the city.

Under the evidence, then, we must conclude, with the learned trial court, that a portion of the land now occupied by the city of Cebu as a public plaza is land described in the petitioner's exhibits, and is so much of said land as is contained in the plan marked petitioner's Exhibit J. As to a paper title to said land so occupied as a public square, the city has presented none. To that land it shows no documentary or record title whatever. The paper title of the petitioner to such land is entirely unmet and uncontradicted. The city presents no rights to or interest in the same except that acquired by long years of actual occupation. It signifies no source from which comes any other right or interest and asserts no ability to disclose any. Its ownership is based upon prescription solely.

Were it not for petitioner's Exhibit K, we would be inclined to hold, upon the record, that the opponent's occupation had ripened into a title by prescription. We would be disposed to say that the proofs show that the city has occupied the lands in question adversely since the year 1863, and that, by reason thereof, it has acquired title under the provisions of the Civil Code relating to prescription. In view of that exhibit, however, we do not find it necessary to determine that question, inasmuch as, in our judgment that exhibit demonstrates conclusively that such occupation was permissive and not adverse, was under license and not under claim of right, and could not, therefore, be made the basis of a prescriptive title.

Before presenting that exhibit, it should be said that the proofs uncontradictedly demonstrate that the possession by the city of the land in question was initiated and maintained, down to the year 1890, when the ayuntamiento of Cebu was formed, by the political and military governor of Cebu; that every act of possession and dominion exercised during the improvements made thereon were made by his direction and with provincial moneys; that, so far as appears from the record, not a single act of possession or dominion over said land was exercised except through him during all the years from 1863 down to 1890. From the latter year to the time of the American occupation, the ayuntamiento, according to the evidence, seems to have maintained the possession.

As to said exhibit: On or about the 8th day of June, 1869, there seems to have arisen a controversy over the possession of the land in question. Although, apart from the document then executed, the evidence is somewhat uncertain and vague as to what actually happened, nevertheless, from what appears, it is a necessary deduction that the seminary, on or about that date, interfered with the possession of the city and requested that the matter be adjusted to the end that the rights of the parties in the land might be made clear. The political and military governor of Cebu being, as we have seen, the official under whose orders and directions possession of the land had been taken and maintained, the officials of the seminary naturally went to him for an adjustment. As a result

of that adjustment the following document, petitioner's Exhibit K, was executed by the political and military governor of Cebu, Joaquin Monet:

PETITIONER'S EXHIBIT K.

"Don Joaquin Monet y Estevez, military and political governor, with the assistance of the attesting witnesses, etc., does hereby certify, in due form, that part of the Plaza Urbiztondo included in the work which is now being done for a public promenade to be known as "Dolores" belongs to the Seminary of San Carlos and the Chaplaincy of the Cathedral, according to the topographical plan of this city on file in the archives of the said Seminary, which said land has been ceded by the rector, Jose Casaramona, and the devout parish priest, Leon Esequiel, the persons charged with the preservation of the property belonging to their respective trusts, this as long as the said promenade which embellishes the town exists as such.

"In testimony thereof, and at the request of the interested parties, I issue these presents in triplicate at Cebu this eighth day of June, one thousand eight hundred and sixty- nine,

(Signed) "JOAQUIN MONET.

(Signed) "LORENZO ESPINA.

(Signed) "CALIXTO DEL CAPA."

The instrument, in our opinion, conclusively characterizes the occupation of the land in question and renders untenable the position of the city that its possession was adverse and under claim of right and should be made the basis of prescriptive title under the Civil Code. That code provides:

"Art. 1941. Possession must be in the capacity of an owner, public, peaceful, and uninterrupted.

"Art. 1942. Acts of a possessory character, performed by virtue of a license, or by mere tolerance on the part of the owner, are of no effect for establishing possession."

"Art. 1948. Any express or implied acknowledgment which the possessor may make with regard to the right of the owner also interrupts possession."

The law presented by these articles is substantially the same as that laid down by the American courts. It is there generally held that "any act of recognition or acknowledgment of a superior title in another during the period of adverse possession, will, as a general rule, amount to an interruption of the continuity of the possession and defeat the operation of the statute."

The political and military governor of Cebu, being the official by whose acts the possession of the land in question was begun and maintained on behalf of the city, particularly prior to and at the time of the execution of the above instrument, all acts and words of his giving color to that possession are binding upon the city and conclusive as to the quality thereof.

The city seeks to evade the legal effects of this document in two ways: First, by asserting that it has not been properly proved for admission as evidence, in that the signature of Joaquin Monet was not shown to be genuine; and, second, by contending that said Joaquin Monet was not, as a matter of fact, political and military governor of Cebu at the time that the document bears date.

Neither of these contentions can be maintained. The document in question having been executed in the year 1869, and having subsequently been generally acted upon as genuine by persons having an interest in the subject matter involved, and its custody having been satisfactorily explained, its genuineness must be presumed under the provisions of section 334, paragraph 34, of the Code of Civil Procedure. Moreover, sections 326 and 327 of said

Code provide that:

"SEC. 326. When other evidence of the execution of writing need, not be produced. - Where a writing is more than thirty years old, and evidence is given that the party against whom the writing is offered has at any time admitted its execution, or where the writing is one produced from the custody of the adverse party, and has been acted upon by him as genuine, no other evidence of the execution need be given.

"SEC. 327. Proof of handwriting. - The handwriting of a person may be proved by anyone who believes it to be his, and has seen him write, or has seen writing purporting to be his, upon which he has acted, or been charged, and he has thus acquired knowledge of his handwriting. Evidence respecting the handwriting may also be given by comparison, made by the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. Where the writing is more than thirty years old, the comparisons may be made with writings purported to be genuine, and generally respected and acted upon as such by persons having an interest and knowing the fact."

For the purpose of making the comparisons, mentioned in the last section, the petitioner offered in evidence a bound volume of official communications from the political and military governor of Cebu to the Bishop of Cebu. Several of said official communications, bearing dates November 20, 1867, December 14, 1867, January 9, 1868, February 13, 1868, February 17, 1868, February 22, 1868,, and November 11, 1868, are signed by said Joaquin Monet as "El gobernador interino" of the politico-military government of the Visayas. The signatures to those documents are genuine. From a comparison of the signature on Exhibit K with those on the official communications, it is manifest, as the learned trial court found, that the signature on the exhibit is genuine. Moreover, that document, as a whole, bears every evidence of being genuine.

As to the second contention of the city that Joaquin Monet was not, in reality, political-military governor of Cebu at the time said instrument was executed, it also must be rejected. We are confident that the said document is a genuine document and that Joaquin Monet was governor of Cebu at the time the same was signed. That he was such governor at such time is clearly demonstrated by the official "Gaceta de Manila," dated June 22, 1869, in which, on page 1207, appears the name of Joaquin Monet as political and military governor of Cebu. On that page is seen an official document formulated and signed by him as such governor on the 5th day of June, 1869. In the said "Gaceta de Manila" of July 22, 1869, at page 164, appears another official document formulated and signed by said Joaquin Monet, as governor of Cebu, which document bears date the 5th day of July, 1869. Both of these writings were official documents made and signed by him in the course of the performance of his official duties as political and military governor of Cebu. In this connection it must be remembered that the disputed document, Exhibit K, bears date the 8th day of June, 1869, only three days after the date borne by said document of June 5th above mentioned. It should also be noted that, in writing the official communications found in Exhibit L, said bound volume of official communications, Joaquin Monet was acting as governor interim of the politico-military-government of the Visayan Islands. In signing the disputed document he acted as the political-military governor (not interino) of Cebu, not the Visayan Islands. Most of the argument of the learned counsel for the city in relation to the second contention is founded in a failure to observe the distinction between the official character of Joaquin Monet as manifested in Exhibit L and that shown in Exhibit K.

Exhibit K, however, must be taken as it reads. Its benefits and its obligations go hand in hand. If the seminary asks the advantages which it confers it can not escape the obligations which it imposes. That instrument not only gives character to the possession which the city then had and thereafter claimed to have of the land in dispute, rendering that possession incapable of being used as the basis of prescriptive rights, but it also gives the city the right to continue in that possession as long as it remains of the kind described therein, namely, "as long as the said promenade which embellishes the town exists as such." In other words, it makes, or, at least, recognizes as already made, a cession of the use of the land in question to the city of Cebu so long as the same continues to be used in

the manner in which it was then being used or for the purposes for which it was then being prepared to be used. There was a legal consideration for this obligation, thus rendering it enforceable, even though it be urged that the transaction could not have been called a voluntary dedication to public use. Nor may it now be contended that the church officials who appear to have taken part in the transaction were not authorized and had no power to bind the seminary or the church. That instrument has long been a record of the church, known to it through all its officials, and has been presented by the church in this litigation as an efficacious and enforceable instrument. Its benefits may not be taken and its obligations rejected. It can not be interpreted to bind and loose at the same time to the same party.

For these reasons it is our opinion that the petitioner has the legal title to the land in dispute, but that the city of Cebu has the right to the possession, occupation and use of said land for the purposes above expressed and presented in said Exhibit K, above quoted, to be so occupied and possessed so long as said land is dedicated to the uses and purposes therein expressed.

The judgment of the court below is modified and the land described in Exhibit J is hereby ordered registered in the name of the petitioner, but such registration is subject to and must affirmatively show the rights of the city of Cebu to the possession, occupation and use of said land as herein above set forth. As modified, said judgment is affirmed.

Arellano, C. J., Mapa, Carson and Trent, JJ., concur.

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