

AARON NADELA AND FELIPA JACA, PETITIONERS, VS. RICARW CABRAS, RESPONDENT.*G.R. No. 46902. June 29, 1940*

Ponente: MORAN, J.

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Plaintiff spouses, Aaron Nadela and Felipa Jaca, and defendant spouses, Ricardo Cabras and Tranquilina Dacay, are owners of adjoining lots Nos. 1306 and 1303, respectively, of the cadastral survey of Cebu, Cebu, the first having purchased theirs in 1931, and the second, in 1918, for which transfer certificates of titles were respectively issued to them. The record discloses that at the time of their purchase, plaintiffs already knew of the existence of an old cement wall separating their lot from lot No. 1303 of the defendants, and of the house of the latter standing in said lot No. 1303. On February 14, 1933, plaintiffs filed in the Court of First Instance of Cebu a complaint alleging that the defendants were encroaching upon, and illegally withholding from them, two portions included in their lot No. 1306, as shown by their sketch plan, Exhibit A. Defendants traversed with the defense that plaintiffs' sketch plan was incorrect, and that the portions by them occupied form part of their lot No. 1303 ever since its purchase by them from the original owners. A relocation was ordered by the trial court whereby it was found that the recorder, instead of recording 103° 36' for corner 2 of lot No. 1306, erroneously placed 113° 36', or a difference of 10 degrees in azimuth. This resulted in an erroneous setting of corner 2 appearing on the land without monument, instead of coinciding with point PLS/BL (old). This error was confirmed by the trial judge in an ocular inspection of the disputed boundary. It was found that if plaintiffs' sketch plan would be admitted as correct, their lot would include the cement wall and part of appellees' house and would also extend to the public canal and Tupaz street. The trial court rendered judgment ordering the correction of the plan of lot No. 1306 so that corner 2 mentioned in the technical description would be transferred to the place where monument PLS/BL (old) is located; and also of the plan of lot No. 1303 so that said monument would be excluded from Tupaz street and the canal alongside thereof. The Court of Appeals upheld the propriety of the correction but ruled that the trial court was without authority to order the same, a petition in the original registration case being the proper procedure. It is this judgment which is now sought to be reviewed in the instant petition for certiorari.

Appellants maintained that the correction of the error sought by the appellees is foreclosed by the decree of registration in the cadastral proceedings, and that they are entitled to the protection of the law as innocent purchasers for value.

Section 112 of Act No. 496 permits the correction of errors in the technical description of lands covered with a certificate of title (Domingo vs. Santos, 55 Phil., 361, 373; Roxas vs. Enriquez, 25 Phil., 31, 64), provided that the original decree of registration be not thereby reopened (Cuyugan vs. Syquia, 24 Phil., 567) and the "title or other interest of a purchaser holding a certificate for value and in good faith" be not thereby impaired. It appears that when appellants purchased lot No. 1306 they already knew of the existence of appellees' house in the portions of land by them claimed as well as the existence of the cement wall separating their lot from that of the appellees. The knowledge of such facts should have put them upon such inquiry and investigation as might be necessary to

ascertain the true boundary of the land they purchased. Failing in this, they are not truly purchasers in good faith; and, by the demands of equity, they cannot now be permitted to claim as theirs what they have by their silence, impliedly recognized as belonging to others, and such implied recognition is supported by the true facts of the case.

We, however, agree with the Court of Appeals that the trial court, in the exercise of its general jurisdiction, is without authority to order the correction, and that the proper procedure is a petition in the original registration case.(Sec. 112, Act No. 496; *Gustilo vs. Maravilla*, 48 Phil., 442; also, *Legarda and Prieto vs. Saleeby*, 31 Phil., 590.)

Judgment is affirmed, with costs against appellants.

Avanceña, Pres., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Judgment affirmed.

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