

VICTORIANO SIGUENZA, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF HINIGARAN, DEFENDANT AND APPELLEE.

G.R. No. 4996. November 26, 1909

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff in this action, alleging that he is the owner of a certain tract of land described in his complaint, seeks to recover a parcel of land which he claims is situated within the boundary lines of his tract but is "included in the official inventory of the real estate of the defendant municipality," and by it unlawfully occupied.

Defendant having failed to answer the complaint within the time prescribed by law, judgment in default was rendered in favor of the plaintiff on the 30th of August, 1907; but on the 3d of September, 1907, the trial judge set this judgment aside on the ground that the defendant municipality's failure to answer within the time prescribed by law was the result of the excusable negligence of its counsel. To this order plaintiff duly excepted, and now assigns as error the action of the court in this regard.

Section 113 of the Code of Civil Procedure is as follows:

"Upon such terms as may be just, the court may relieve a party or his legal representative from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect: Provided, That application therefor be made within a reasonable time, but in no case exceeding six months after such judgment, order, or proceeding was taken."

This section clearly places the granting of relief from judgments and orders, upon such terms as may be just, within the discretion of the trial court, and there is nothing in the record which indicated an abuse of this discretion in the case at bar. The provincial fiscal, upon whom the law imposes the duty of representing the defendant municipality in this action, frankly admitted in his motion that he had negligently overlooked filing the answer on behalf of the municipality, and explained that his failure so to do was due to the many urgent demands, upon his time and attention in the performance of his duties as prosecuting attorney during the term of court then pending. The trial judge accepted this explanation as sufficient, and we can not say that under all the circumstances, which were peculiarly within his knowledge, he erred in doing so.

The only evidence in the record in support of plaintiff's allegation that the parcel of land in question is included within the boundary limits of plaintiff's tract is the testimony of plaintiff's attorney, who stated on the witness stand that he knew the location of the land in dispute and that it lies within the boundary lines of the tract of land described in plaintiff's composition title (*titulo de composicion*), which was introduced in evidence.

We agree with the trial court that, in view of the other evidence in the record, the oral testimony of this witness is not sufficient to establish the allegation of the complaint that the land claimed by plaintiff lies within the boundary limits set out in his composition title. The witness evidently knew very little about the precise location either of the land of his client or of that alleged to have been unlawfully occupied by the defendant municipality. The original complaint filed by him alleged the unlawful occupation by defendant of a parcel of land containing not

less than three hectares, while the amended complaint alleges that the land of the plaintiff occupied by the municipality contains not less than ten hectares. He knew nothing, apparently, of his own knowledge or observation, of the extent of the land which he said had been unlawfully occupied by the defendant, nor of the actual location of the boundary line of his client's land; and on the witness stand, he was unable, or in any event failed utterly, to say in what part of the larger tract the land in dispute is located.

The land claimed by the plaintiff is described in the amended complaint as a parcel of not less than 10 hectares "included in the official inventory of the real estate of the defendant municipality," and it was proven in the court below that the land thus described is a part of the territory upon which is located the barrio of Arando, founded in the year 1852, and since that time settled and occupied by the people of the barrio who claim title to the land occupied by them through or from the defendant municipality. The witnesses for the defense testified that the lands of the plaintiff lie to the south of this barrio; that since the year 1852, down to the time when this action was instituted, neither plaintiff nor his predecessors in interest had ever asserted any claim of title in or to the lands now in dispute; and that plaintiff, since the date of his composition title, had bought from some of the inhabitants of the barrio several small tracts of land within the parcel of land in dispute.

Plaintiff's composition title does not show that the tract granted therein included the parcel of land on which the barrio of Arando is located, and it would seem at least very probable that, if this land had in fact been included in plaintiff's title when it was issued, some reference to that fact would be made therein, the barrio having been founded and organized long before the composition title was issued.

The complaint alleges that until a few months prior to the filing of this action plaintiff did not know that defendant occupied the land in question. But the evidence conclusively establishes that the land whereon the barrio of Arando is located, which includes the land in dispute, has been occupied publicly, openly, and peaceably by, and has continued under the control of, defendant, its predecessors, and successors in interest for more than half a century. It would seem, therefore, that until a few months prior to the filing of this action plaintiff did not know or believe that the land in dispute was included within the boundaries of his tract as described in his composition title issued many years ago. Yet, beyond the bare assertion of his attorney that one tract is included in the other, there is not a scintilla of evidence in the record in support of his claim now put forward for the first time; nor has he attempted to explain why he now pretends that the land in question is included in his grant, although for so many years he was not aware of that alleged fact.

The evidence of record wholly fails to sustain plaintiff's allegation that the land in dispute, as described in the complaint, lies within the boundary lines of the tract described in his composition title, and judgment was therefore properly rendered in favor of the defendant.

The trial Court, however, appears to have gone beyond the issues submitted in the pleadings, and after finding that the evidence of record does not affirmatively establish plaintiff's allegations declared that even if it be a fact that the land in question is included within the boundary limits of plaintiff's tract as set out in his composition title, then the composition title is to that extent void, its issue having been fraudulently procured by the plaintiff or his predecessors in interest. The court also undertook to adjudicate the status of the streets and plaza of the above-mentioned barrio. These matters were never properly in issue in this action, and indeed it may well be doubted whether the validity of the grant evidenced by plaintiff's duly recorded composition title could have been put in issue by a collateral attack in this action, so as to give the trial court jurisdiction to adjudicate these questions.

The judgment of the court below should be modified by striking out as much thereof as goes beyond the adjudication of the case in favor of the defendant and against the plaintiff on the ground that plaintiff failed to

establish the material allegations of his complaint, and, thus modified, the judgment appealed from should be and is hereby affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C.J., Torres, Johnson, and Moreland, JJ., concur.

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