

MANUELA GREY ALBA ET AL., PETITIONERS AND APPELLANTS, VS. ANACLETO R. DE LA CRUZ, OBJECTOR AND APPELLEE.*G.R. No. 5246. September 16, 1910*

Ponente: TRENT, J.

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These petitioners, Manuela, Jose, Juan, and Francisco, surnamed Grey y Alba, are the only heirs of Dona Segunda Alba Clemente and Honorato Grey, deceased. Remedios Grey y Alba, a sister of the petitioners, was married on the 21st day of March, 1903, to Vicente Reyes and died on the 13th of July, 1905, without leaving; any heirs except her husband. The four petitioners, as co-owners, sought to have registered the following-described property:

"A parcel of land situated in the barrio of Talampas, municipality of Baliuag, Province of Bulacan, upon which are situated three houses and one camarin of light material, having a superficial area of 52 hectares, 51 ares, and 22 centares; bounded on the north by the highway (calzada) of Talampas and the lands of Rita Ruiz Mateo; on the east by the lands of the said Rita Ruiz Mateo, Hermenegildo Prado, Policarpo de Jesus, and a stream called Sapang Buslut; on the south by the same stream and the lands of the capellania; and on the west by the stream called Sapang Buslut, and the lands of Vicente de la Cruz, Jose Camacho and Domingo Ruiz Mateo."

This parcel of agricultural land is used for the raising of rice and sugar cane and is assessed at \$1,000 United States currency. The petition, which was filed on the 18th of December, 1906, was accompanied by a plan and technical description of the above-described parcel of land.

After hearing the proofs presented, the court entered, on the 12th of February, 1908, a decree in accordance with the provisions of paragraph 6 of section 54 of Act No. 926, directing that the land described in the petition be registered in the names of the four petitioners, as coowners, subject to the usufructuary right of Vicente Reyes, widower of Remedios Grey.

On the 16th of June, 1908, Anacleto Ratilla de la Cruz filed a motion in the Court of Land Registration asking for a revision of the case, including the decision, upon the ground that he is the absolute owner of the two parcels of land which are described in said motion, and which, according to his allegations', are included in the lands decreed to the petitioners. He alleged that the decree of February 12, 1908, was obtained maliciously and fraudulently by the petitioners, thereby depriving him of said two parcels of land. He further alleged that he was the absolute owner of the two parcels of land, having inherited them from his father, Baldomero R. de la Cruz, who had a state grant for the same. He therefore asked, under the provisions of section 38 of the Land Registration Act (No. 496), a revision of the case, and that the said decree be modified so as to exclude the two parcels of land described in said motion. The Land Court upon this motion reopened the case, and after hearing the additional evidence presented by both parties, rendered, on the 23d of November, 1908, its decision modifying the former decree by excluding from the same the two parcels of land claimed by Anacleto Ratilla de la Cruz. From this decision and judgment the petitioners appealed and now insist, first, that the trial court erred in reopening the case and modifying its decree. dated the 12th of February, 1908, for the reason that said decree was not obtained by

means of fraud; and, second, that the court erred in holding that the two parcels of land described in the appellee's motion are not their property.

It was agreed by counsel that the two small parcels now in dispute form a part of the land described in the petition and were included in the decree of February 12, 1908, and that the petitioners are the owners of the remainder of the land described in the said decree.

The petitioners inherited this land from their parents, who acquired the same, including the two small parcels in question, by purchase, as is evidenced by a public document dated the 26th of November, 1864, duly executed before Francisco Iriarte, alcalde mayor and judge of the Court of First Instance of the Province of Bulacan.

Baldomero R. de la Cruz, father of the appellee, obtained in March, 1895, a state grant for several parcels of land, including the two parcels in question. This grant was duly inscribed in the old register of property in Bulacan on the 6th of April of the same year.

It is admitted that at the time the appellants presented their petition in this case the appellee was occupying the two parcels of land now in question. It is also admitted that the name of the appellee does not appear in the said petition as an occupant of the said two parcels. The petitioners insist that the appellee was occupying these parcels as their tenant and for this reason they did not include his name in their petition, as an occupant, while the appellee contends that he was occupying the said parcels as the absolute owner under the state grant by inheritance.

The court below held that the failure on the part of the petitioners to include the name of the appellee in their petition, as an occupant of these two parcels of land, was a violation of section 21 of Act No. 496, and that this constituted fraud within the meaning of section 38 of said Land Registration Act. The trial court further held that the grant from the state should prevail over the public document of purchase of 1864.

The mother of the petitioners died on November 15, 1881; their father died prior to that time. Manuela, the oldest of the petitioners, was about six years of age when their mother died. So these children were minors when the father of the appellee obtained the state grant.

On the 13th of June, 1882, Jose Grey, uncle and representative of the petitioners, who were then minors, rented the land owned by the petitioners' deceased parents to one Irineo Jose for a period of three years. On the 23d of March, 1895, the said Jose Grey, as the representative of the petitioners, rented the same land for a period of six years to Baldomero R. de la Cruz, father of the appellee. This rental contract was duly executed in writing. This land was cultivated during these six years by Baldomero R. de la Cruz and his children, one of whom is the appellee. On the 14th of December, 1905, Jose Grey, for himself and the other petitioners, rented the same land to Estanislao R. de la Cruz for a period of two years. Estanislao de la Cruz on entering into this rental contract with Jose Grey did so for himself and his brothers, one of whom is the appellee. While the appellee admits that his father and brother entered into these rental contracts and did, in fact, cultivate the petitioners' land, nevertheless he insists that the two small parcels in question were not included in these contracts. In the rental contract between the uncle of the petitioners and the father of the appellee the land is not described. In the rental contract between Jose Grey, one of the petitioners, and Estanislao R. de la Cruz, brother of the appellee, the two small parcels of land in question are included, according to the description given therein. This was found, to be true by the court below, but the said court held that as this contract was made by Estanislao R. de la Cruz it was not binding upon Anacleto R. de la Cruz, the appellee.

The two small parcels of land in question were purchased by the parents of the petitioners in 1864, as is evidenced by the public document of purchase and sale of that year. The same two parcels of land are included in the state

grant issued in favor of Baldomero Ratilla de la Cruz in 1895. This grant was obtained after the death of the petitioners' parents and while they were minors. So it is clear that the petitioners honestly believed that the appellee was occupying the said parcels as their lessee at the time they presented their application for registration. They did not act in bad faith, nor with any fraudulent intent, when they omitted to include in their application the name of the appellee as one of the occupants of the land. They believed that it was not necessary nor required that they include in their application the names of their tenants. Under these circumstances, did the court below commit an error in reopening this case in June, 1908, after its decree had been entered in February of the same year?

The application for registration is to be in writing, signed and sworn to by the applicant, or by some person duly authorized in his behalf. It is to contain an accurate description of the land. It shall contain the name in full and the address of the applicant, and also the names and addresses of all occupants of land and of all adjoining owners, if known; and, if not known, it shall state what search has been made to find them. In the form of notice given by statute, which shall be sworn to, the applicant is required to state and set forth clearly all mortgages or encumbrances affecting said land, if any, the rights and interests, legal or equitable, in the possession, remainder, reversion, or expectancy of air persons, with their names in full, together with their place of residence and post-office addresses. Upon receipt of the application the clerk shall cause notice of the filing to be published twice in the Official Gazette. This published notice shall be directed to all persons appearing to have an interest in the land sought to be registered and to the adjoining owners, and also "to all whom it may concern." In addition to the notice in the Official Gazette the Land Court shall, within seven days after said publication, cause a copy of the notice, in Spanish, to be mailed by the clerk to every person named in the application whose address is known; to cause a duly attested copy of the notice, in Spanish, to be posted in a conspicuous place on every parcel of land included in the application, and in a conspicuous place on the chief municipal building of the town in which the land is situated. The court may also cause other or further notice of the application to be given in such manner and to such persons as it may deem proper. The certificate of the clerk that he has served the notice as directed by the court by publication or mailing shall be conclusive proof of such service. Within the time allowed in the notices, if no person appears and answers, the court may at once, upon motion of the applicant, no reason to the contrary appearing, order a general default. By the description in the published notice "to all whom it may concern," and by express provision of law "all the world are made parties defendant and shall be concluded by the default and order." If the court, after hearing, finds that the applicant has title, as stated in his application, a decree of registration shall be entered.

"Every decree of registration shall bind the land and quiet title thereto, subject only to the exceptions stated in the following section. It shall be conclusive upon and against all persons, including the Insular Government, and all the branches thereof, whether mentioned by name in the application, notice, or citation, or included in the general description 'to all whom it may concern.' Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceedings in any court for reversing judgments or decrees; subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the Court of Land Registration a petition for review within one year * * *." (Sec. 38 of Act No. 496.)

The appellee is not included in any of the exceptions named in section 38 referred to above.

It will be seen that the applicant is required to mention not only the outstanding interest which he admits but also all claims of interest, though denied by him. By express provision of law all the world are made parties defendant by the description in the notice "to all whom it may concern."

Although the appellee, occupying the two small parcels of land in question under the circumstances as we have set forth, was not served with notice, he was made a party defendant by publication; and the entering of a decree

on the 12th of February, 1908, must be held to be conclusive against all persons, including the appellee, whether his (appellee's) name is mentioned in the application, notice, or citation.

The said decree of February 12, 1908, should not have been opened on account of the absence, infancy, or other disability of any person affected thereby, and could have been opened only on the ground that the said decree had been obtained by fraud. That decree was not obtained by fraud on the part of the applicants, inasmuch as they honestly believed that the appellee was occupying these, two small parcels of land as their tenant. One of the petitioners went upon the premises with the surveyor when the original plan was made.

Proof of constructive fraud is not sufficient to authorize the Court of Land Registration to reopen a case and modify its decree. Specific, intentional acts to deceive and deprive another of his right, or in some manner injure him, must be alleged and proved; that is, there must be actual or positive fraud as distinguished from constructive fraud.

The question as to the meaning of the word "fraud" in the Australian statutes has been frequently raised. Two distinctions have been noted by the Australian courts; the first is the distinction between the meaning of the word "fraud" in the sections relating to the conclusive effect of certificates of title, and its meaning in the sections relating to the protection of bona fide purchasers from registered proprietors. The second is the distinction between "legal," "equitable," or "constructive" fraud, and "actual" or "moral" fraud. In none of the groups of the sections of the Australian statutes relating to the conclusive effect of certificates of title, and in which fraud is referred to, is there any express indication of the meaning of "fraud," with the sole exception of that of the South Australian group. (Hogg on Australian Torrens System, p. 834.)

"With regard to decisions on the sections relating to the conclusive effect of certificates of title, it has been held in some cases that the 'fraud' there mentioned, means actual or moral fraud, not merely constructive or legal fraud. In other cases 'fraud' has been said to include constructive, legal, and every kind of fraud. In other cases, again, knowledge of other persons' rights, and the deliberate acquisition of registered title in the face of such knowledge, has been held to be 'fraud' which rendered voidable the certificates of title so obtained; and voluntary ignorance is, for this purpose, the same as knowledge. But in none of these three classes of cases was there absent the element of intention to deprive another of just rights, which constitutes the essential characteristics of actual as distinguished from legal-fraud." (Id., p. 835, and cases cited in notes Nos. 85, 86, 87, 88, and 89 at bottom of pages 835 and 836.)

By "fraud" is meant actual fraud - dishonesty of some sort. (Judgment of Privy Council in *Assets Co. vs. Mere Roihi*, and *Assets Co. vs. Panapa Waihopi*, decided in March, 1905, cited by Hogg in his Supplementary Addendum to his work on Australian Torrens System, *supra*.) The same meaning should be given to the word "fraud" used in section 38 of our statutes (Act No. 496).

The question as to whether any particular transaction shows fraud, within the meaning of the word as used in our statutes, will in each case be a question of fact; We will not attempt to say what acts would constitute this kind of fraud in other cases. This must be determined from the facts and circumstances in each particular case. The only question we are called upon to determine, and have determined, is whether or not, under the facts and circumstances in this case, the petitioners did obtain the decree of February 12, 1908, by means of fraud.

It might be urged that the appellee has been deprived of his property without due process of law, in violation of section 5 of the Act of Congress of July 1, 1902, known as the "Philippine Bill," which provides "that no law shall be enacted in the said Islands which shall deprive any person of life, liberty, or property without due process of law."

The Land Registration Act requires that all occupants be named in the petition and given notice by registered

mail. This did not do the appellee any good, as he was not notified; but he was made a party defendant, as we have said, by means of the publication "to all whom it may concern." If this section of the Act is to be upheld this must be declared to be due process of law.

Before examining the validity of this part of the Act it might be well to note the history and purposes of what is known as the "Torrens Land Registration System." This system was introduced in South Australia by Sir Robert Torrens in 1857 and was there worked out in its practicable form.

The main principle of registration is to make registered titles indefeasible. As we have said, upon the presentation in the Court of Land Registration of an application for the registration of the title to lands, under this system, the theory of the law is that all occupants, adjoining owners, adverse claimants, and other interested persons are notified of the proceedings, and have a right to appear in opposition to such application. In other words, the proceeding is against the whole world. This system was evidently considered by the Legislature to be a public project when it passed Act No. 496. The interest of the community at large was considered to be preferred to that of private individuals.

"At the close of this nineteenth century all civilized nations are coming to registration of title to land, because immovable property is becoming more and more a matter of commercial dealing, and there can be no trade without security." (Dumas's Lectures, p. 23.)

"The registered proprietor will no longer have reasons to fear that he may be evicted because his vendor had, unknown to him, already sold the land to a third person. * * * The registered proprietor may feel himself protected against any defect in his vendor's title." (Id., p. 21.)

"The following summary of benefits of the system of registration of titles, made by Sir Robert Torrens, has been fully justified in its use:

"First. It has substituted security for insecurity.

"Second. It has reduced the cost of conveyances from pounds to shillings, and the time occupied from months to days.

"Third. It has exchanged brevity and clearness for obscurity and verbiage.

"Fourth. It has so simplified ordinary dealings that he who has mastered the 'three R's' can transact his own conveyancing.

"Fifth. It affords protection against fraud.

"Sixth. It has restored to their just value many estates, held under good holding titles, but depreciated in consequence of some blur or technical defect, and has barred the re-occurrence of any similar faults." (Sheldon on Land Registration, pp. 75, 76.)

"The boldest effort to grapple with the problem of simplification of title to land was made by Mr. (afterwards Sir Robert) Torrens, a layman, in South Australia in 1857. * * * In the Torrens system title by registration takes the place of 'title by deeds' of the system under the 'general' law. A sale of land, for example, is effected by a registered transfer, upon which a certificate of title is issued. The certificate is guaranteed by statute, and, with certain exceptions, constitutes indefeasible title to the land mentioned therein. Under the old system the same sale would be effected by a conveyance, depending for its validity, apart from intrinsic flaws, on the correctness of a long series of prior deeds, wills, etc. * * * The object of the Torrens system, then, is to do away with the delay, uncertainty, and expense of the old conveyancing system." (Duffy & Eagleson on The Transfer of Land Act, 1890, pp. 2, 3, 5, 7.)

"By 'Torrens' systems generally are meant those systems of registration of transactions with interest in land

whose declared object * * * is, under governmental authority, to establish and certify to the ownership of an absolute and indefeasible title to realty, and to simplify its transfer." (Hogg on Australian Torrens System, *supra*, pp. 1, 2.)

Compensation for errors from assurance funds is provided in all countries in which the Torrens system has been enacted. Cases of error no doubt will always occur. The percentage of errors, as compared with the number of registered dealings in Australia, is very small. In New South Wales there were, in 1889, 209,894 registered dealings, the average risk of error being only 2 1/2 cents for each dealing. In Queensland the risk of error was only 14 cents, the number of registered dealings being 233,309. In Tasmania and in Western Australia not a cent was paid for compensation for errors during the whole time of operation,. (Dumas's Lectures, *supra*, p. 96.) This system has been adopted in various countries of the civilized world, including some of the States of the American Union, and practical experience has demonstrated that it has been successful as a public project.

The validity of some of the provisions of the statutes adopting" the Torrens system has been the subject of judicial decision in the courts of the United States. (People vs. Chase, 165 Ill., 527; State vs. Guilbert, 56 Ohio St., 575; People vs. Simon, 176 Ill., 165; Tyler vs. Judges, 175 Mass., 71.)

Act No. 496 of the Philippine Commission, known as the "Land Registration Act," was copied substantially from the Massachusetts law of 1898.

The Illinois and Massachusetts statutes were upheld by the supreme courts of those States.

"It is not enough to show a procedure to be unconstitutional to say that we never heard of it before." (Tyler vs. Judges, *supra*; Hurtado vs. California, 110 U. S., 516.)

"Looked at either from the point of view of history or of the necessary requirements of justice, a proceeding in rem dealing with a tangible res may be instituted and carried to judgment without personal service upon claimants within the State or notice by name to those outside of it, and not encounter any provision of either constitution. Jurisdiction is secured by the power of the court over the res. As we have said, such a proceeding would be impossible, were this not so, for it hardly would do to make a distinction between the constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all." (Tyler vs. Judges, *supra*.)

This same doctrine is annunciated in Pennoyer vs. Neff (95 U.S., 714); The Mary (9 Cranch, 126); Mankin vs. Chandler (2 Brock., 125); Brown vs. Levee Commission (50 Miss., 468); 2 Freeman, Judgments, 4th ed., sees. 606, 611.

"If the technical object of the suit is to establish a claim against some particular person, with a judgment which generally, in theory at least, binds his body, or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defense, the action is in personam, although it may concern the right to or possession of a tangible thing. If, on the other hand, the object is to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established, and if anyone in the world has a right to be heard on the strength of alleging facts which, if true, show an inconsistent interest, the proceeding is in rem." (Tyler vs. Judges, *supra*.)

In the case of Hamilton vs. Brown (161 U. S., 256) a judgment of escheat was held conclusive upon persons notified by advertisement to all persons interested. In this jurisdiction, by the "provisions of the Code of Civil Procedure, Act No. 190, a decree allowing or disallowing a will binds everybody, although the only notice of the proceedings given is by general notice to all persons interested.

The supreme court of Massachusetts, in the case of Tyler vs. Judges (*supra*), did not rest its judgment as to the conclusive effect of the decree upon the ground that the State had absolute power to determine the persons to

whom a man's property shall go at his death, but upon the characteristics of a proceeding in rem. So we conclude that the proceedings had in the case at bar, under all the facts and circumstances, especially the absolute lack on the part of the petitioners of any dishonest intent to deprive the appellee of any right, or in any way injure him, constitute due process of law.

As to whether or not the appellee can successfully maintain an action under the provisions of sections 101 and 102 of the Land Registration Act (secs. 2365, 2366, Compilation) we do not decide.

For these reasons we are of the opinion, and so hold, that the judgment appealed from should be, and the same is hereby reversed and judgment entered in favor of the petitioners in conformity with the decree of the lower court of February 12, 1908, without special ruling as to costs. It is so ordered.

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

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