

MANUEL OLIGAN, REPRESENTED BY JOSE OLIGAN, APPLICANT AND APPELLEE, VS. FLORENCIO MEJIA, OPPONENT AND APPELLANT.*G.R. No. 5553. December 15, 1910*

Ponente: TORRES, J.

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By a writing of October 5, 1906, Jose Oligan, in representation of his father, Manuel Oligan, applied for the registration, pursuant to the Land Registration Act, of a tract of land belonging to the latter, situated in the barrio of San Vicente of the pueblo of Manaoag, Pangasinan, comprised within the reservation, and bounded on the north by a creek, the name of which is unknown; on the east by the lands of Ambrosio Agsaoan and Apolinario Lata and the channel of the Abisuleng or Abiluleng River; on the south by the channel of the said river, and on the west by the land of Catalina Arevalo. This property has an area of 7 hectares and 32 ares and was appraised at the last assessment at \$160 United States currency. Its description and boundaries are given in detail in the plan accompanying the application. This land was acquired more than fifteen years ago by settlement and cultivation. The applicant stated that the property had no encumbrance of any kind, that no other person claimed any right or share therein, and that it was occupied by himself and his brother, Jacinto Oligan; that, in the improbable event of his application being inadmissible under the Land Registration Act, he would then rely upon the benefits of Chapter VI of Act No. 926, because of his having been in possession of the land, using it for the cultivation of tobacco, for nearly fifteen years prior thereto; and by another written application of March 1, 1907, amendatory of his previous one, he set forth that the owner of the land on the other side of the creek, mentioned in his former application, was Florencio Mejia, a resident of Lingayen, whose property was bounded on the north and west by the applicant's land.

Notwithstanding the opinion of the register of deeds that, on account of the application not being accompanied by any document whatever to prove the possession alleged, the property could not be registered, the usual procedure was followed at the request of the interested party, and, on this account, the Attorney-General, in representation of the Director of Lands, appeared for the purpose of intervening in the course of the proceedings; and Florencio Mejia, by a writing of January 21, 1908, opposed the registration, alleging that the applicant was not the owner of any land adjoining his own, nor had any right therein, and that he himself owned the land which was the subject of the application for registration. This opponent therefore prayed that the claims of the applicant Oligan be disallowed.

Jacinto Oligan, by a writing of January 20, 1908, also opposed the registration of the aforesaid property applied for by Manuel Oligan, on the ground that the application unlawfully included, toward the north, a parcel of the opponent's land 5 ares and 40 centares in area. He did not, however, persist in his opposition, nor adduce any proof in support thereof.

The case having come to trial and evidence being adduced by both parties, the judge, by an order of February 29 of the same year, ruled that, before rendering final judgment in this case, the facts relative to the possession and occupation of the land in question should be brought out by the presentation of new evidence, wherefore he

declared the trial to be reopened and set a day for the continuation of the hearing on the case.

The new hearing was held on November 18, 1908, new evidence was presented, and the court, in view thereof, disallowed the adverse claims filed, and decreed, upon the entry of a general default, the adjudication and registration of the said land in the name of the applicant, Manuel Oligan. Counsel for the opponent, Florencio Mejia, excepted to this judgment and prayed that it be quashed and the case reopened on the ground that the evidence adduced was insufficient, which motion was overruled and exception was taken by the opponent, who duly filed the proper bill of exceptions, which was approved, certified, and forwarded to this court.

In order that an application for the registration of a rural property in the registry of property may prosper, it is indispensable that the person who presents the same exercise absolute control over the land, that he be the owner, proprietor, and possessor of the realty and establish in a clear and unmistakable manner the situation and boundaries of the same in such wise that the identity of the property proposed for registration be perfectly proved.

The applicant for the registration of real property is in the same condition as is a person who prosecutes, before the courts, an action for the recovery of possession wherein it is necessary, to secure a favorable judgment, that the claimant prove, in an unquestionable manner, his ownership and the identity of the property claimed. The applicant, Manuel Oligan, was unsuccessful in fulfilling these requirements, notwithstanding the testimony of the several witnesses whom he presented, as it appears from the proceedings had in this case.

A due and careful examination of the testimony of the applicant and his witnesses discloses great confusion and notable and substantial contradictions therein with regard to the approximate date when Oligan began to occupy and to break up the land in question, as well as with respect to the date when he commenced to sow the same. The applicant even contradicted himself in his own testimony which, besides, does not accord with that given by his witnesses; furthermore the latter contradicted one another in the matter of certain details which, notwithstanding the order of February 29, 1908, could not be cleared up.

The applicant's plan, Exhibit A, must have been made about the middle of the year 1906, and in the month of June his technical description (p. 3 of the record) appears to have been signed, and if it is not deficient, as at first sight it appears to be, it is to be believed that the land, the registration of which is solicited, is in fact comprised within the land of greater area belonging to the opponent, inasmuch as the said plan does not show who are the adjacent owners of the lands to the north, south, and west, and gives but two boundaries toward the east and the Abiluleng River; and the applicant, answering in a confused, when not contradictory, manner the questions addressed to him, was unable to establish the true boundaries of the land claimed by him, so that, by depending on his testimony, it would be impossible to determine the true situation of the said property. His own witness, Paulino Lata (p. 14 of the record), testified that the land of Florencio Mejia in the barrio of San Vicente comprised the land in question, and the applicant himself, Manuel Oligan, stated that the original owner of his land was Jose Perez, from whom it was purchased by a man named Bosch, and afterwards by one Arevalo, and that, with respect to the boundaries of his land, the creek, the northern boundary of the same, was called Abiluleng Subul, while in his own plan it is only stated that toward the north there is a creek, and that its southern boundary was the Abiluleng River, adding in his said testimony that the river just mentioned changed its course once upon a time, though it afterwards returned to its old channel. Since the Abiluleng River forms the southern and eastern boundary lines of the property, and crosses the land of the opponent Mejia, it is not possible for the applicant's land to have for its northern, western, and southern boundaries the same river, as the applicant and one of his witnesses, Jacinto Reyes, in an undecided and confused manner stated that it had, for, according to the plan of the said land, it is bounded on the north by a creek, and on the south and east by the Abiluleng River, notwithstanding the different names by which, the applicant affirms, this river is known.

The applicant Oligan did not exhibit a title nor any document whatever to prove even so much as his possession, and the record does not show any data by means of which it might be shown that the land in question was public unappropriated land, susceptible of occupation, when the applicant took possession of it on a date which he could not fix with certainty.

On the contrary, the record shows it to have been fully proved that, at the time of the death of Carlos Bosch, he was in possession of a large tract of land situated in Macayug, barrio of San Vicente, comprising the property sought to be registered by the applicant, Oligan. After Bosch died, his widow, Leona Lamsen, instituted possessory information proceedings, in April, 1895, before the justice of the peace court of the pueblo of San Jacinto, in connection with the said 77 hectares of land the situation and boundaries of which appear in the information mentioned (Exhibit 2, found on p. 33 of the trial record), and which parcel is shown to have been recorded in the registry of property of Pangasinan on the 1st of April, 1901, page 35. This information bears witness that his predecessors, the proprietors of the land therein referred to, had been in possession of the same for more than thirty years. So that the original owners of the land of which the property in litigation forms a part were in legitimate possession of it very many years prior to 1895, and this possession is proven by a public document.

On June 24, 1901, according to Exhibit No. 3, which is attached to page 36 of the record, the whole of the said tract of land was sold to Juan Arevalo by the widow and heirs of the deceased Carlos Bosch, and the deed of sale was entered on the registry of property on July 30, 1901.

On the 10th of July of the same year, 1901, Juan Arevalo, in turn, sold the same land, having the same area and boundaries, to Florencio Mejia, according to the deed found on page 29 of the trial record and also recorded in the registry of property on the 30th of the same month and year.

The opponent, Florencio Mejia, averred in an affidavit that he continued in the possession of the land enjoyed by his ancestors, the last of whom was Juan Arevalo; that Mariano Biascan, who corroborated the statement, was the affiant's manager in charge of the said land; and that he paid the taxes pertaining to the property, as evidenced by the receipts exhibited on pages 52 and 53 of the trial record.

From the testimony of the witnesses of the opponent Mejia it likewise appears that, on demand being made upon the applicant Oligan by Mariano Biascan, the manager for the owner, the first time, in 1904, for the payment of the rental of the land occupied by the said opponent, the latter replied that three years had not yet elapsed since he had possessed the property, and that, when a similar demand was made on him the second time, he refused to pay the rental, saying that the land was his because he had cleared it, which was not true, because those who cleared the land of wood and brush were Domingo Agsaoay, Policarpo Milanes, and another man, which parties stated that, after they had been working on the land for three years and when they had it cleared the applicant Oligan took possession of it, on the fourth year of the insurrection that is, in 1901 or 1902 - a detail which was confirmed by a statement made by Oligan himself in his testimony, to the effect that he began to sow the land in 1903; wherefore proof is absolutely lacking to show that the applicant was in possession of unappropriated public land for more than ten years, the period required to enable him to claim the benefits allowed by section 54 of the Public Land Act, No. 926.

The trial record shows that the applicant, during the fury of the insurrection and when the opponent could not personally appear on his land nor attend to it, took advantage of those circumstances and possessed himself of the portion of the property that he detains and seeks to register without right whatever - a procedure which does not affect the true and legitimate possession of the entire tract of land, pertaining to the opponent, inasmuch as article 444 of the Civil Code prescribes:

"Acts which are merely tolerated and those clandestinely executed, without knowledge of the possessor of the

thing, or by force, do not affect the possession."

It is to be noted that the opponent, Florencio Mejia, is now in possession of the whole tract of 77 hectares of land, which he had legitimately acquired by just title, as proven by public documents duly registered which he exhibited in proof of his contention, and neither reason nor legal ground exists wherefore he should be deprived of a certain portion, more than 7 hectares, which forms a part of the said 77 hectares, for the benefit of the applicant who has proved no right therein whatever, nor even a possession such as ought to be protected by the law and the courts.

For the foregoing reasons, it is our opinion that the judgment appealed from should be reversed and the case dismissed, and we so hold, inasmuch as the portion of land the entry of which on the registry of property is sought belongs to the opponent. No special finding is made with respect to the costs in either instance. So ordered.

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

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