

MARIANO ESCUETA, PETITIONER AND APPELLEE, VS. THE DIRECTOR OF LANDS, OBJECTOR AND APPELLANT.

G.R. No. 5720. August 20, 1910

Ponente: TORRES, J.

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TORRES, J.:

On the 17th of August, 1908, Mariano Escueta filed an application in the Court of Land Registration, soliciting the registration, in conformity with the Land Registration Act, of a property or parcel of land of which he was alleged to be the absolute owner, situated at No. 173 Calle Ilaya, of the district of Ton do, Manila, bounded on the north by property of Manuel Abreu and Juan Mauricio; on the northeast by Calle Ilaya; on the southeast by property of Susana Marquez, Macaria Villareal, and Donato Miguel; and on the southwest by property of Macario Cui-Malay and Timoteo Lanuza. The application states that this land contains 798'34,16 square meters, the description and boundaries of which are given in the detailed plan inclosed therewith; that there is no encumbrance of any kind on the said land, nor any person who may consider that he has a right to or a share in the same, according to the applicant's best knowledge and belief, and that the latter acquired the said property, through purchase, from Ildefonso Ramirez y Apostol, according to the deed ratified by the vendee, on May 8, 1908, before the notary public, Fermin Mariano. Among other particulars, the applicant states that he is the present occupant of the land. The application is accompanied by a plan of the land, a deed of sale executed by the said Ildefonso Ramirez in favor of the applicant, and another instrument executed by Telesfora Apostol in favor of the said Ramirez, on August 25, 1905, before the notary Fernando de la Cantera, recorded on folio 73 under No. 1045, fourth inscription; and by another instrument executed by the spouses Francisco Rojo and Susana Modesto, in favor of the aforementioned Telesfora Apostol, on July 7, 1903, before the notary public Calixto Reyes y Cruz, recorded on folio 72, back, of the registry, under No. 1045, third inscription.

After the conclusion of the regular legal procedure and the receipt of the report from the register of deeds, this case came up for hearing on the 15th of February, 1909, and at the trial the petitioner presented in evidence several documents which were admitted by the court. In view of the proofs so presented the judge, on the same date, issued an order decreeing the adjudication and registration of the said property in accordance with the petition of Mariano Escueta y Bernabe.

On the 23d of the same month, the petitioner stated in writing to the court that, after the hearing, he had learned that the true boundaries of his land on its southeastern side were the properties of Susana Marquez, Macaria Villareal, Protasio Cabrera, and of the deceased Gregorio Pineda, these two latter instead of Donato Miguel Castro; that the said Protasio Cabrera was then residing at Boac, Marinduque, and was represented in this city by his sister, Placida Cabrera, domiciled at No. 152 Calle de Ilaya, Tondo, and that the deceased Gregorio Pineda was represented by his judicial administratrix, Ignacia Lopez, residing at No. 105 Calle Folgueras, Tondo; that both representatives of the said adjacent property owners agreed to the amendment which he petitioned to have made in the description of his land; that the measurements and true degrees of the said southeastern side were those given in the writing, and that in view of the amendments specified the area of the land should be 806'40,17

square meters instead of 798'34,16 square meters, as appeared on the plan attached and which was annexed to the application. The petitioner therefore asked the court to admit the amendments aforesaid.

The court, on March 18, ordered that the honorable Attorney-General should be granted a hearing on the aforesaid petition, so that he might make such opposition thereto as he deemed proper, and in order that the case might be forwarded to the Supreme Court.

The Attorney-General, by a writing of March 27, 1909, and for the reasons therein expressed, opposed the amendments solicited by the petitioner, except upon a new description of the land, other due notifications and previous publication.

By another writing of the same date, the Attorney-General excepted to the judgment rendered in the case, announced his intention to file a bill of exceptions, and asked for a new trial, on the grounds that the court's findings of fact were manifestly contrary to the weight of the evidence, and further stating that the latter did not sufficiently justify the said judgment, which, he declared, was also contrary to law. A date was set for the hearing of the motion for a new trial.

After a red line had been drawn on the plan, Exhibit A, by the surveyor of the court, as provided by order of August 23, 1909, on the 28th of the same month a decision was rendered by the court granting the proposed amendment solicited, without new advertisement or notifications, and disallowing the claim made by the Director of Lands. The Attorney-General, in the name of the said Director, took exception to the decision mentioned and announced his intention to file the proper bill of exceptions, which, on being filed, was forwarded to the clerk of this court with the appeal submitted.

It is a mere question of law that is raised in this case, through the appeal filed by the Attorney-General, in representation of the Director of Lands, against two decisions of the Court of Land Registration, and is, whether or not new notifications and publications are necessary in cases where, after they once have been made and the registration of the realty has been decreed, the applicant requests an amendment of the description of the land and of its plan, with an increase in area and the statement of the name of a new adjacent property owner not mentioned in the previous notifications and publications, or substituting the same by other names.

The judge of the Court of Land Registration decided that in the present case it was not necessary to issue new notifications and to republish, and, for the reasons set forth in his order of August 28, 1909, aforementioned, decreed that the amendment solicited was proper, without new advertisement or notices.

From the whole of the provisions contained in Act No. 496, it appears that the procedure required in the case of an application for registration is that denominated in law in rem, that is, one against all persons who may allege any right to the property that is the subject of the application for registration, and the decree of the court granting it constitutes a valid and effective title, not only against all the owners of the adjacent properties who appeared at the trial, but also against all the parties who may have an interest in the land.

In order that the registrations decreed by the Court of Land Registration and the titles in consequence thereof issued might be vested with greater guarantee of security, the said Act No. 496 provided for an assurance fund wherewith to pay the claims filed against the property registered in accordance with the provisions thereof, and prescribed the due procedure to be followed and observed on the basis of publication. For this reason, it is provided that the applicant shall attach to his application for the registration of the land a plan and a description thereof; that all the owners of the adjacent properties and all other persons who may have any interest in the said land shall be notified, and that the notifications shall be published in the Official Gazette and in the newspapers, together with a description of the property to which the application refers, which description, with the plan, must

be the basis of the record, and the decree, in case the applicant's petition is granted, must contain an exact and detailed description of the land, in accordance with the final decision of the court.

If amendments or alterations were permitted in the description of land sought to be registered, after the publication of the application in the newspapers and the issuance of the decree for the registration of the property, on the petition of the interested party, without new notifications and advertisement whereby to make known to all persons the said alterations and amendments concerning the situation, boundaries, and area of the land, the mandate of the law would be violated relative to the publicity of the proceedings prescribed for the registration of real estate, a publicity which permeates the whole system of special trial established for the registration of landed properties. Moreover, third parties who have not had an opportunity to present their claims, might be seriously affected in their rights by not being notified, it being natural and just that they be not injured in consequence of the rectification that is sought.

The alteration or amendment of the plan of the land in question and of its description may affect other persons besides the adjacent property owners Protasio Cabrera and the heirs of Gregorio Pineda: wherefore the agreement of these owners or of their representatives is not sufficient in order to comply with the Land Registration Act, for there might be other persons who have a right in rem in the properties of the said adjacent owners who would be injured by the diminution of the area of the property encumbered by such a right in rem. This possible injury to them should be avoided by means of new notifications and publications concerning the rectification or amendment desired. Moreover, a third party, who did not appear to allege his right in consequence of the previous publication of the description of the land, in accordance with the original plan, in the belief that the property concerned is one in which he had no interest whatever, would afterwards find that the said land, by a subsequent decree of the court, has a different situation and different boundaries which affect his right, of which differences he was not duly informed, on account of the omission of the indispensable notification and publication ordered by law.

This omission might give rise to the possibility of claims being filed against the Government for losses and damages on the grounds that the claimant, without negligence on his part and through the lack of notification and publication of the rectification and amendment of the boundaries and situation of the land, was unable to appear at the trial and was prevented from defending his rights and presenting the proper claim. Such a case should be guarded against as should also a decree of registration of a parcel or tract of land which does not conform exactly to the parcel which is the subject of the proceedings or that the description of the same should not coincide with that set forth in the decree ordering the registration.

For the reasons above expressed, it is proper, in our opinion, that, with a reversal of the decree of February 15, providing for the registration of the said land, and the decree of August 28, 1909, the case be returned to the Court of Land Registration, in order that, by due notifications and new publications of the amendment or rectification of the description of the land, as expressed in the applicant's petition, the judge may proceed in accordance with law and render in due course of time such decree as justice demands. So ordered.

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

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