

**LUIS PEREZ Y SAMANILLO, PETITIONER AND APPELLEE, VS.
VICENTE GONZALEZ, OPPONENT AND APPELLANT.***G.R. No. 5897. November 19, 1910*

Ponente: TORRES, J.

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On the 27 of July, 1908, Luis Perez Samanillo, represented by his brother, Rafael Perez, filed an application with the Court of Land Registration praying that a title of ownership be issued to him, through registration in conformity with the Land Registration Act, of a property of which he alleged he was the owner, consisting of a lot and buildings, designated by Nos. 137 to 157 on Calle Escolta, upon which it fronts, and by Nos. 2 to 20 on Calle David, and facing the Sibacon estero, which side is without number, situated in the district of Binondo, Manila. Said property is bounded on the northeast by the said estero, on the southeast by the Escolta, on the southwest by Calle David, and on the northwest by the property of Vicente Gonzalez, having an area of 2,124 square meters and 43 square decimeters, 1,904 square meters and 21 square decimeters of which are covered by buildings. The description and boundaries of the said land are given in detail in the plan which accompanied the application. It was further alleged that, at the last assessment, the property was appraised at P280,974 - the land at P201,974, and the building at P79,000; that there was no encumbrance of any kind on the said property, nor any person who might consider himself entitled to a right, share, or interest therein, according to the applicant's best knowledge and belief; that the latter, Luis Perez y Samanillo, acquired the lot and buildings by inheritance from his deceased mother, Agustina Samanillo y Fragoso, the widow of the deceased Manuel Perez y Marqueti, the applicant's mother having died in Barcelona, Spain, on March 17, 1901; that the applicant had no objection to make with regard to the way the streets were then laid out; and that the premises were occupied by several tenants, whose names are given in the application.

After the publications and notifications had been made in connection with the said application, counsel for the spouses Vicente Gonzalez and Manuela E. Salvador y Padilla, the owners of the adjoining premises, filed an adverse petition wherein it was stated that the plan presented by the applicant, on the side marked with the letters E, F, G, D, E, overlapped the division line of the land belonging to the opponents, the applicant thereby appropriating to himself a piece of vacant land of about sixty square meters which forms a part of the opponents' property; that aside from the fact that the said land was in the possession of the deceased, Narciso Padilla, from the year 1835, his descendant, Maria Barbara Padilla, continued to possess it for more than fifty years using it as a place for the storage of lumber, for at the end of the wall on the premises of the present owners there still exists a wooden door 2 varas in height by one and a half in width which, since 1835, has been the entrance to the piece of land in question, and that the eaves of the roof of the opponents' house project more than half a vara from the wall of the house over the said small court into which the water from the roof of the building falls; that in this latter there is a window about 3 varas high by two and a half wide, with an iron grating, both of which project from the wall about half a vara over the said court, which window was opened in 1851 and has since served to admit light into the room to which it belongs; that the foregoing details prove that the said space of land has never belonged to the applicant, because there is no entrance from the latter's property to the said court. The opponent therefore

prayed that, in view of his adverse claim, the case be admitted to trial and the witnesses summoned, and in support of his petition he exhibited the documents marked "A," "B," and "C."

During the hearing of the case the parties thereto agreed that on the lines D, E, and F R there is a window 3 varas in height by two and a half in width, which projects half a vara from the wall of the opponents' house, and also that there is a door on the latter's premises through which access may be had to the land in dispute, and that the eaves of the roof of the opponents' house project more than half a vara over the said land. The judge ordered that the court, attended by both litigants, should repair to the disputed land in order that the latter might agree upon the fact of the existence or nonexistence of a chamfer alleged by the opponents' attorney.

The court, attended by the attorneys of both the litigating parties, by the applicant's attorneys in fact, and by an expert presented by the opponents, having repaired to the land in question for the purposes of ocular inspection, it was found that the lines D, E, and E F of the plan exactly mark the line of the wall of the opponents' house; that the said house had eaves projecting over the land in litigation and shed their water thereon; that in the wall of the said house toward the court in question there was a window, with an iron grating, about 2.20 meters in height by 1.20 in width, and on the ground floor a door for entrance to the disputed land; that in the wall of the applicant's house, line M N, there were five windows in the first story, and five others in the second story, and that the roof of this building also projected over the disputed land or court, where the applicant's water drain is situated. The latter's attorney called attention to the fact that the opponents' house is surrounded by balconies, except toward the part in litigation, and that the eaves of the opponents' house, which projected over the said land, had a lesser extension. The opponents' attorney being questioned as to the age of the two adjoining buildings replied that, according to a statement of the witness Maria Barbara Padilla, her father acquired the opponents' house in 1835, while that of the applicant was constructed in 1886; that the applicant's property has no way of access to the court in dispute so that, upon complaint by the residents of the opponents' house, in order to gather up garbage thrown from the applicant's premises into the said court, the applicant's tenants ask permission to enter the court by passing through the only existing door and which was cut in the opponents' wall, for there was no door in the applicant's building that gave entrance to the lot in question, although one of the applicant's attorneys in fact testified that, before the construction of the present water-closet, there was a door which communicated with the court, but this allegation was denied by the opponents' attorney.

At this stage of the proceedings the judge observed that the stone wall closing the line F N of the plan was not of ancient construction and was erected for the water-closet built by the applicant, with the permission of the municipality, to whom the land belonged, according to the applicant's counsel. It was also ascertained that, according to the opponents' expert, mention was made in the opponent's documents of two chamfers, which constitute the true boundary of the property; that the awnings placed against the applicant's house for the protection of its windows, extended over the lot in question; that various timbers which served as supports for the uprights of the applicant's building, were observable at the surface of the ground in the said court and occupied more than half of its width; that the said water-closet, constructed by the applicant, was comprised within the points N, F, R S, approximately, and this was agreed to by the parties, and that on the line B C of the applicant's plan there was a building which had an azotea and three windows in the lower story and three in the second.

The court, in view of the evidence adduced in this case and of the allegations advanced by both parties thereto, rendered judgment on December 27, 1909, and found that the disputed piece of land was an integral part of the applicant's lot, denied the adverse claim filed by Vicente Gonzalez and decreed that, after a general default had been entered, the said property should be awarded to and registered in the name of Luis Perez y Samanillo, and ordered that the register of titles of this city of Manila should make a record of the fact that the property inscribed under No. 361, with respect to ownership, on page 30, back, of volume 8 of the registry of the district of Binondo,

No. 23 of the archives, third inscription, had been awarded to the said Luis Perez y Samanillo, in case No. 4548, pursuant to Act No. 496.

From this judgment the opponent appealed and moved for a new trial. His motion was denied, and he likewise took an appeal from this ruling and, the proper bill of exceptions having been filed, the same was certified and forwarded to the clerk of this office.

The subject of controversy between the parties to this suit is the ownership of a small piece of land lying between two properties owned by them, respectively, and near the Sibacon estero, district of Santa Cruz.

In order to decide the question as to who is the owner of the disputed lot, it becomes necessary, in the first place, to examine the titles of the owners of each one of the adjoining properties, and to bear in mind that the block of five houses which belongs to the applicant now occupies two adjacent lots that formerly belonged to different owners; that prior to the acquisition of these lots by the now deceased Manuel Perez, the predecessor in interest of the applicant, there existed on each of them a house of rough masonry with stone walls, which houses were destroyed by fire; and that the lot in litigation borders, the greater part of it, the land nearest to the said Sibacon estero.

The lot which, before the fire, was occupied by the house No. 37 of Calle Escolta, was sold, according to a public instrument dated January 13, 1886, by Felipe Govantes and Matias Saenz de Vizmanos, the latter as the attorney in fact of Manuel de Azcarraga, to Manuel Perez Marqueti, for 46,481.56 pesos, at the rate of 35 pesos, 3 centimos, and one octavo per meter of the 1,326.86 square meters which the said lot was found to contain, in accordance with a new survey made for the purpose, for the reason that the rough sketch thereof exhibited at the sale of the land at public auction showed the same to comprise a larger number of square meters, as stated in the said instrument.

The other lot situated alongside the Sibacon estero, which, before the fire, was occupied by the house No. 39 of the same street, Escolta, was purchased, with its walls and stone pavement unconsumed by the fire, by the same party above mentioned, Manuel Perez Marqueti, from the attorney in fact of Eduardo Antonio Keller, for 23,404.07 pesos, as shown by a public instrument dated March 9, 1886, at the rate of 31 pesos for each square meter of its area, 754.97 square meters, with the walls, according to the plan drawn by the engineers, Barlow and Wilson, on July 5, 1882, and the certificate issued by the architect, Antonio Ulloa.

The total area of these two lots, adjacent to each other, on which the purchaser Perez erected his five united buildings, aggregate 2,081.81 square meters, although the plan, accompanied by the technical description, attached to the application addressed to the Court of Land Registration, states that the area of the lot now occupied by the applicant's buildings is 2,124.43 square meters, showing an excess of 42.62 square meters over and above the number given in the deeds of both lots.

It is to be noted that, as both properties were purchased at auction at the rate of so much per square meter, the presumption is, and there is no proof to the contrary, that the purchaser exercised all due care and diligence (as it must be supposed that he did in order to avoid his paying more than he should) to fix and determine the exact number of square meters for which he had to pay in accordance with the respective selling prices since, in the natural order of things, it is not to be presumed that he was sufficiently careless in this matter to expose himself to have to pay for a greater number of square meters than the land actually contained.

Another circumstance which must be kept in mind is the respective ages of each of the buildings erected on the three adjoining lots, in the middle of which, toward the Sibacon estero, is located the lot in litigation. Among the titles exhibited by the applicant, mention is made in the instrument dated January 26, 1858, of the house of rough

masonry, No. 34, afterwards 37, Escolta, as being already in existence and as one of the pieces of realty included in the inheritance of the deceased Jose de Azcarraga (p. 46 of the record). With respect to the house No. 39, which stood beside the Sibacon estero, near the foot of the Santa Cruz Bridge, then called de visita, there was also exhibited by the applicant, among other titles, the instrument dated May 18, 1832, in which it appears that this property, belonging to the estate of the deceased Manuela Lara, was sold at public auction to Manuel Zaragoza. As to the house at No. 28 Calle David, which is situated at the back of the applicant's property and now belongs to the opponent's wife, it appears that the same was acquired by, one of the opponent's predecessors in 1833 or 1834, according to the documents exhibited by the opponent (p. 128 of the record) and the affidavit of Maria Barbara Padilla, one of the predecessors of the opponent's wife. So that the three adjoining buildings already existed almost at the commencement of the nineteenth century, if not before, and two of them, Nos. 37 and 39, situated on the Escolta, disappeared as the result of the fire that occurred in October, 1885.

By an examination of the plan and technical description accompanying the application and of the description of the opponent's property given in his title inscribed in the registry of property, page 129, it is observed that, while the division line of the two properties consists of two straight lines with one short perpendicular line crossing them at their point of meeting, as shown in the said plan, in the aforesaid title this division appears as a broken line composed of five straight lines with two chamfers, the first line 19.95 meters long, the second line, the first chamfer, 4.50 meters long, the third 27.40 meters long, the fourth, the second chamfer, 2.60 meters long, and the fifth, 2.38 meters in length. From these two contradictory descriptions it is deduced that, if the applicant's plan is taken as correct, the space of land in litigation forms a part of his property, while to judge from the text of the opponent's title the said fractional lot is comprised within his title and can not be a part of the applicant's property. It is impossible that the division line of the two adjoining lots could be formed at the same time by two straight lines on one side and by five straight lines and two chamfers on the other.

When the applicant's building was erected in 1887, for many years, since before 1833, the opponent's building, with its stone wall and a door opening into the small disputed lot, had been in existence, and in the two titles of the two adjoining lots, on which the applicant's building was erected, no record appears of the form and configuration of the lots on the side adjacent to the opponent's property, while in the latter's title there is shown the configuration of his lot and the different forms in which the same adjoins the two immediate lots, surrounded by their respective stone walls, before their sale to the applicant's father. From all of these facts it is concluded that the small lot in question belongs to the opponent and forms a part of the land on which his building is constructed, inasmuch as the detailed description of its boundaries coincides with the configuration of the said land on the side thereof which is adjacent to the applicant's lots, according to the plan in the trial record, and the wall of the said opponent's building, from the first central chamfer, runs in a straight line, parallel with the wall of the applicant's building, toward the estero, with the little disputed lot between them both; moreover, it does not appear that the said wall of the opponent had two chamfers and lay in five straight lines, assuming the configuration described in the applicant's plan and title; wherefore it is unquestionable that the said disputed lot is of the form described, on its side adjacent to the applicant's property.

The lots pertaining to each one of the said buildings, Nos. 37 and 39 of Calle Escolta, which were destroyed by the fire, must have been surrounded by a wall on their boundary line adjoining the lot of the building at No. 28 Calle David, whence it is that, in the instrument of sale, at least of the lot occupied by the building numbered 39 before the fire, mention is made of walls and stone pavement, an important detail, because the space of land in question, in nearly its entire length, adjoins this lot and does not appear to be included in the aforesaid instrument of sale (pp. 109 to 116 of the record), and therefore it must be found that the said disputed strip of land was not comprised in the sale made to Perez by Keller's representative, in March, 1886.

The opponent averred that the said disputed lot belonged to him and, since 1833 or 1834, had been in his possession and that of his wife and her predecessors, which was confirmed by one of the latter, Maria Barbara Padilla, who declared in an affidavit, that when her father, Narciso Padilla, acquired the building at No. 28 Calle David in the year mentioned, the strip of land in dispute formed a part of the lot on which the said building stood, and that the disputed land was used and enjoyed ever afterwards by her father and herself, without any opposition on the part of the owners of the two adjoining properties. This witness added that when she first began to live in the said building she was 7 years of age; that, to provide a means of entrance to the land in controversy, a doorway, which still existed, had been opened through the wall of the said building, No. 28, the eaves of the roof of which shed water onto the said lot, where her father and her family were accustomed to store lumber and other things and where they kept hogs and other animals; that there was also a window with a projecting iron grating in the upper story of the building and which overlooked the lot in litigation without objection or complaint by anybody.

The existence of the said door, which allowed entrance to the little lot from the opponent's house, appears to be confirmed by the testimony of Jose M.a Arriola, the applicant's attorney in fact, and of Otto Mur, the manager of the firm of Sprungli & Co., the tenants of the opponent's building, and by the evidence obtained during the ocular inspection held by the court on the said small lot and on the adjoining properties. Moreover, the said Arriola testified that, when the water-closet was built on the end of the disputed strip of land, toward the estero, the inclosing partition was constructed on the side away from the estero, and on a diagonal line, for the purpose of respecting the said door opened in the wall of the opponent's building, a detail confirmed by the proceedings of inspection.

The petitioner Perez having erected his building in 1887, if he were the owner of the strip of land in question, he would, at least, have constructed his walls on the part of this strip on which the water from the eaves of the opponent's house did not fall; and if he did not do so, it was because he then believed that he should respect another's real property in the same manner that he did the door opened in the opponents' wall.

The small area of land in litigation is approximately 2 meters and some few centimeters in width, and the successive owners of the house No. 28 of Calle David and their tenants, have exercised acts of dominion over the said land, for the eaves of this house extend over it and shed the rain water thereupon, the iron grating of a window, opened in the upper story of the said house, projects half a meter over the said land and from this space receives light, and the said owners and tenants have been in the habit of entering upon the property by passing through the door before mentioned, for the purpose of enjoying the full and free use thereof, while no exit whatever existed from the applicant's building to the said strip of land, and if sometimes his tenants were obliged to enter the same they had to pass through the lot on which the opponent's house stands, after obtaining permission from the latter's tenants, and through the only door there which was opened in the wall of this house.

Article 582 of the Civil Code prescribes:

"Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, two meters between the wall in which they are built and said estate.

"Neither can side nor oblique views be opened over said property, unless there is a distance of sixty centimeters."

Article 586 of the same code also provides:

"The owner of a building is obliged to construct his roofs or coverings in such a manner that rain water may fall on his own land or on the street or public place, and not on the land of his neighbor. Even if it falls on his

own land, the owner is obliged to collect it in such manner that it will not injure the adjoining estate."

Had the applicant or some of his remote predecessors owned the strip of land in question, they would not have consented to the opponents' house, No. 28, being constructed with a roof and window grating projecting or extending over their property, nor would they have permitted the rain water from such a roof to fall onto it to the detriment of their rights and interests, which are protected by the civil law, both ancient and modern, in accordance with the preinserted articles of the code.

If for more than seventy-five years, up to the date of the commencement of this suit, the opponents' building has been maintained with the said projections and entrance door to the land in question without objection or complaint on the part of the successive owners of the two adjacent properties, it is because the said strip of land forms an integral part of the opponents' property and never belonged to the applicant's predecessors, and the trial record shows not even circumstantial evidence that the applicant or his predecessors ever were in possession of or exercised any acts of ownership over the said strip of land.

That the opponent or his predecessors may have been careless and negligent in consenting to the performance, "with respect to the lot in question, of acts and works productive of easements, does not prove that the said opponent was not the legitimate owner of the said lot; and though it be true that there is a discrepancy between the total measurement of the lot on which the opponent's said building, No. 28, stands, as recorded in the entry made in the registry and that expressed in the plan presented by the same opponent in the Administracion, together with a sworn statement, for the purpose of taxation, such discrepancy may be the subject of administrative action, but does not favor the applicant's claim nor prove that the land in litigation belongs to him, for, between the plan and technical description of the land occupied by the applicant's five buildings, and the registry memorandum of the latter inserted in the report of the register of deeds (p. 7 of the record), together with the description of the property set forth in the instrument (p. 17 of the record), executed by Agustina Samanillo, a notable discrepancy is also observed in the measurement of the land on which the said buildings are erected - 2,124.43 square meters according to the plan, and 2,076.29 square meters according to the documents mentioned.

The recent act of the applicant's representative in having opened a door affording entrance from his property to the fractional lot in question, as appears by the written notice given to this court by the opponent on the 28th of July of this year, does not affect the reasoning herein set forth, but, on the contrary, confirms the conclusion that the said lot does not belong to the applicant, but is the property of the opponent.

With the exclusion of the aforesaid small lot, the sole subject of the present litigation and of the opponent's claim, the applicant's property may of course be registered in the registry of property, but without the fractional lot before mentioned, in accordance with the provisions of Act No. 496 and in the manner therein prescribed; and the plan of the land occupied by the buildings, together with the technical description, must be rectified by excluding therefrom the said fractional lot which belongs to the opponent.

The opponent, on praying that his said small lot be excluded from the registry of the applicant's property, did not in turn apply for its registration in the property registry, wherefore it is unnecessary to determine in this case the different kinds of easements which encumber the said disputed lot, in favor of the applicant's property, inasmuch as, pursuant to section 40 of Act No. 496, there must be set forth in the decree of registration only the easements and other encumbrances to which the owner's estate is subject, and not those existing in favor of the same and which encumber the adjacent property, for the said section contains, among other provisions, the following:

"* * *, and also, in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, and other incumbrances, including rights of husband or wife, if any, to which the land or owner's estate is subject, * * *."

For the foregoing reasons, it is proper, in our opinion, to affirm the judgment appealed from, as we hereby do, but with the express exclusion of the fractional lot in litigation, which has been found to be the property of the opponent, Vicente Gonzalez. The property of the applicant, Luis Perez y Samanillo, shall be entered in the registry of the Court of Land Registration in accordance with and in the manner provided by law, after a rectification of his plan, and without prejudice to any rights of easement which may encumber the small excluded lot in favor of the registered property. No special finding is made as to costs. So ordered.

Johnson, Moreland, and Trent, JJ., concur.

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