

THE ROMAN CATHOLIC ARCHBISHOP OF MANILA, PETITIONER AND APPELLANT, VS. THE INSULAR GOVERNMENT ET AL., OBJECTORS AND APPELLEES.

G.R. No. 6355. March 31, 1915

Ponente: CARSON, J.

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CARSON, J.:

On December 31, 1913, this court filed its decision in the above-entitled cause directing the entry of judgment reversing the judgment entered in the court below in so far as it adjudicates title to the land described in the application or any part thereof in favor of the applicant, and affirming that judgment in so far as it adjudicates adversely the applicant's claim of title to that portion of the land in question which is described in the Attorney-General's petition opposing the registry thereof and dated November 1, 1909.

On January 13, 1914, the applicant presented a motion for a rehearing, which was set down for argument on the 18th day of July, 1914, by resolution of this court dated March 23, 1914.

In support of this motion a 129-page printed brief has been filed by the applicant, in which an attempt is made to review the whole course of these proceedings from the date of the filing of the original petition; and argument is renewed as to the various contentions of the applicant throughout the course of the proceedings on appeal.

It is vigorously contended that this court erred in holding as it did that:

"Upon his (applicant's) own showing, his only interest in the land is such right as he may have by virtue of the 'censo' imposed thereon by the codicil to the will of Ana Sarmiento, deceased: and such right to possession as he may have acquired, against all claimants other than those claiming through Ana Sarmiento, deceased, for the purpose of securing and enjoying the said 'censo,' which we hold to be a censo consignativo."

In support of this contention, counsel for applicant renew at length the various contentions which were duly considered and ruled upon adversely at the original hearing.

But counsel further contend:

"That even granting that there was a charge imposed upon the estate which could be termed a 'censo consignativo,' which petitioner denies, inasmuch as the residuary estate and the beneficiary estate have been merged in the petitioner, the petitioner is now the owner of the estate in fee simple, for it appears from the evidence presented (folios 64 and 65, Exhibit E) that some time after the execution of the codicil to her first will, wherein she provided for the foundation of the capellania of Ana Sarmiento, the deceased named as her heir and disposed of all the remainder of her property in favor of her soul and ordered her three executors, all members of the Order of the Company of Jesus, to dispose of said property as they might see fit."

And after some citations of authority as to the nature and effect of testamentary dispositions designating the testator's soul as residuary legatee of the property of testatrix, counsel concludes:

"It is important to note that the codicil establishing the capellania was a codicil to a prior will which was later

revoked by the will which appears of record. The last will specifically refers to the codicil executed on November 23, 1668. Thus, granting for the sake of argument that the codicil established a censo consignativo, the will itself which was executed later, disposed of all the remainder of the property, which comprised the estate of the deceased, and which would also include the power to redeem the censo in favor of her soul in order that it might be devoted to pious and religious purposes. The evidence shows that the property has always been in the possession and under the absolute control of the Roman Catholic Church. The record shows that from time immemorial the Church has been collecting rent on the property. It is immaterial which branch of the Church had possession of the property. The executors of the will of Ana Sarmiento dedicated the property to the use of the Roman Catholic Church and the Roman Catholic Church is the only person or entity that has the power to redeem this censo, if there be such a thing at this date. In this connection we also call the court's attention to the case of the Capellania de Tambobong vs. Cruz (9 Phil. Rep., 145), which was a capellania similar to the one in question and which was also a case in the Court of Land Registration."

This is the first time, so far as we are advised, that applicant has advanced this contention, and certain it is that the whole theory of the case in this court, and apparently in the court below, has rested up to this time upon the proposition that applicant and his predecessors in interest had acquired title to the land in question by virtue of the codicil to the original will of Ana Sarmiento, deceased. No attempt has heretofore been made to rest applicant's title upon her nomination in a later will of the three members of the Order of the Company of Jesus as executors of the subsequent testamentary dispositions designating her soul as residuary legatee of all her property. Although the document Exhibit E constitutes a part of some hundreds of pages of ancient writings and other documentary evidence in the record, our attention has never been called to it heretofore, and we doubt very much whether the court below ever had occasion to consider the effect of this instrument upon the applicant's claim of title.

For the proper disposition of applicant's claim of registerable title, in so far as it rests upon this muniment of title, it would be necessary to hear and consider evidence touching the validity of these alleged testamentary dispositions, and identifying the property in question with the residuary estate of the deceased, and such other evidence as might be offered to show that the applicant and his predecessors in interests had secured and retained possession of this property. It is impossible to say what would have been the result had applicant asserted and relied upon these testamentary dispositions in support of his title in the court below. For aught we know other and different objectors might have presented themselves, and other and different evidence might have been submitted in the court below in support of the claims of those objecting to the applicant's prayer for registry of his title.

It would be manifestly improper for us, even were we fully satisfied as to the soundness of applicant's contentions with reference to the force and legal effect of these testamentary dispositions, to attempt to adjudicate his claim of title based thereon, without giving all persons interested an opportunity to be heard, and to submit such evidence as they may see fit in support of their objections to the adjudication of title to the land in question in favor of the applicant.

We are sufficiently impressed, nevertheless, with the possibility that if given a suitable opportunity, applicant may be able, with the aid of these muniments of title, to establish title to the greater part of the land described in his petition, to feel it our duty, even at this late day, to secure to him the right to submit his claims anew, and upon a full hearing on the merits in the court below, to have an adjudication of all his contentions in support of his claim of title--not only those properly presented heretofore, but also any others which he may see fit to advance.

These proceedings were had in the Court of Land Registration. Express provision is made in the statute organizing that court for cases such as that now presented to us.

Section 37 of Act No. 496 is as follows:

"If in any case the court finds that the applicant has not proper title for registration, a decree shall be entered

dismissing the application, and such decree may be ordered to be without prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the court."

The motion for a rehearing is denied, but the applicant is given twenty days in which, after having first paid or provided for payment of the costs, he may withdraw his application without prejudice to his right to file a new application, in the adjudication of which none of the orders, rulings or decrees entered in these proceedings shall be deemed to have any binding force or effect. So ordered.

Torres, Moreland, and Araullo, JJ., concur.

JOHNSON, J., dissenting:

I dissent. The judgment of the lower court should be affirmed. I shall write an opinion later.

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