

CLEMENTE MANOTOC, PLAINTIFF AND APPELLANT, VS. FLORA CHOCO Y REYES ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6665. March 30, 1912

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On January 31, 1906, Flora Choco and her sister Severina applied to the Court of Land Registration for the registration of and issuance of title to a parcel of land situated in the district of Tondo.

The owners of the conterminous lands were, among others, cited to appear. One of these was Clemente Manotoc, who did not enter an appearance on the date of the hearing and did not file any objection.

On the 30th of June following, the adjudication and registration of the property was decreed in behalf of the applicants.

Nothing further was done until December 5, 1908, when the applicants filed a petition to have the court surveyor verify the land in accordance with the plan they had presented, in order to determine its true boundaries on the side adjoining the lot of Clemente Manotoc; they further prayed that the sheriff place them in possession of the surveyed land, cleared of all the buildings thereon belonging to others, "for it is made of record," the applicants say, "that the said buildings already stood in the place where they now are, even before the commencement of these proceedings, and if the owners thereof have not been included as occupants in the summons, it is due to the fact that the applicants did not then know how far the true and correct boundaries of their land extended on the side adjacent to the property of Clemente Manotoc."

The Court of Land Registration at once granted all the requests made in the aforesaid petition.

On January 6, 1909, the surveyor of the Land Court, without serving notice on anyone, verified and marked the land by placing monuments.

On the same day, January 6, 1909, Clemente Manotoc came into court and moved that the applicants be cited to appear and that the execution of judgment be suspended for the purpose of correcting the boundaries of both properties, as a part of his land had been included therein. This motion was denied, because it was made out of time and not, as prescribed by section 38 of Act No. 496, within the period of one year.

After the termination of the proceedings and after Clemente Manotoc had been deprived of a part of his land and even of a part of his bodega or warehouse, as a result of the survey made two years subsequent to the entry of the decree of registration, he brought an action in the Court of First Instance of Manila to recover damages for loss of his ownership. This is the question to be decided now, in this new action. It did not come up in the case before the Court of Land Registration; that case was already terminated.

These proceedings were brought against the applicants, Flora and Severina Choco, and subsidiarily against the Insular Treasurer for recovery from the assurance fund provided for in the Land Registration Act; but the plaintiff

subsequently withdrew his action against the Insular Treasurer and continued it solely against the applicants, who are now the only defendants in this suit.

This action is brought to recover the value of three parcels of land that were taken away from Clemente Manotoc; parcels that were well determined by an expert surveyor, without contradiction, and are: (a) a strip measuring 49.27 sq. meters; (b) another of 10.88 square meters; and (c) another of 13.92 square meters, valued, all together, at P1,500. The action also includes the values of several light material buildings that stood on the parcels (a) and (c) and which are worth P137.

It appears that the parcel (b), of 10.84 square meters, is within, and forms a part of the floor of a rubble-stone bodega belonging to Clemente Manotoc. The part of the building that covers this parcel (b) is valued at P183, and the land itself, (b), at P21.76

The conclusions of the lower court are:

First. With respect to the portions (a) and (c), that the applicants did not act fraudulently in including them in their plan and having them included in their title. The court therefore disallowed that part of the complaint.

Second. With respect to parcel (b) covered by a part of Clemente Manotoc's said warehouse, that the applicants did act fraudulently. The trial court said:

"Flora Choco herself, a widow 40 years of age, admits that that bodega, as it now stands and was seen by the court when he made the ocular inspection on the 30th of last July (1910) belonged, and does now belong to Clemente Manotoc, and has been in his possession ever since she can remember, and that, if she included the land occupied by a part of that bodega, it was simply because during the last few days just prior to having the plan of her lot made, she was told by certain persons, whom she does not even name, that the boundaries of the lot that had belonged to her parents extended that far. She had no other reason whatever for including that portion and she made it notwithstanding her personal knowledge that, ever since she was able to remember, Clemente Manotoc had been in the quiet possession of the said land, and that, in the absence of other muniments of title, such possession was sufficient to constitute for him an unquestionable mode of acquisition of the property by prescription."

Third. That the applicants did not act fraudulently with respect to the light-material buildings either. The court therefore disallowed that part of the complaint.

It therefore appears that the court in his judgment allows damages only for the appropriation of parcel (b), and he ordered the defendants to pay to the plaintiff P204.76, with legal interest thereon from the date of the filing of the complaint, without special finding as to the costs.

Both parties appealed from the judgment.

The defendants, Flora and Severina Choco, on appeal to this court, make but one assignment of error. They allege that the court erred in finding that the inclusion in their application for registration, of a portion of land 10.88 square meters in area, together with the part of the bodega standing thereon, was fraudulent, and that consequently it was error to order them to pay P204.76 as damages, together with legal interest thereon from the date of the filing of the complaint. (Brief, p. 2.)

The following facts are relevant to this question:

- That parcel (b), comprising nearly one-third of the area of Clemente Manotoc's lot and warehouse, and which, as stated in the judgment, was included in the property title obtained by the appellants, is older than its present owner, Clemente Manotoc, who is 66 years of age, for the reason that he inherited it from his father. This fact is

confirmed by the appellant Flora Choco, who testified that she was 40 years old and that she had known that the said lot and warehouse belonged to Clemente Manotoc ever since she could remember.

- The petition of the Choco sisters in no manner includes the warehouse or building on that parcel (b), and at first sight it would hardly be noticed that it includes one-third of the lot on which the warehouse stands. Only after the proceedings were terminated and when the Choco sisters requested that their land be surveyed, did landmarks appear as bounding that one-third of the lot and warehouse of Clemente Manotoc as though it ought to have been included in the application, and only then was Clemente Manotoc able to make his objection.

- According to unchallenged testimony of the expert surveyor, Tomas Arguelles, it was impossible by an inspection of the plan which the applicants attached to their application to ascertain that it was intended to include that part of the lot and warehouse belonging to Clement Manotoc. This witness said: "Here nothing is seen but lines, and Manotoc's warehouse is shown. Nothing but lines; it does not say whether there is a wall or not." The plaintiff, Manotoc, testified that he did not appear at the hearing before the Court of Land Registration, because he did not believe that the applicants could go beyond the walls which bounded his land.

- According to the same expert witness, the entire area of the warehouse floor is 35.64 square meters. So that the 10.88 square meters included within the landmarks located after the award of the decree of registration, form nearly a third of the warehouse floor, as stated in the judgment appealed from.

- The 10.88 square meters of ground are valued at P21.76, and the part of the warehouse covering these 10.88 square meters is valued at P183.

From these facts it appears:

First. That, if the application does not in any way include that part of the building which is on parcel (b), neither is it included in the title; and, therefore, it cannot be said that the plaintiff, Manotoc, has lost any part of his warehouse or building; consequently, not having lost it, he cannot claim damages for such supposed loss; for the law does not permit such relief except to the "person aggrieved by the decree of registration." (Act No. 496, sec. 38.)

Second. That the appellants say in their brief on appeal, that "the trial judge himself admits in his judgment that the defendants performed no act tending to demolish that nearly one-third part of Clemente Manotoc's warehouse, which covers an area of 10.88 square meters, no visible alteration having been made therein, the whole of it (the warehouse) being reserved for the enjoyment of the said Manotoc." To which the court adds: "And even without the said sisters having taken any steps, or made any demand upon Clemente Manotoc, with regard to vacating the said parcel of the lot occupied by nearly one-third of his warehouse." (B. of Ex., p. 26.) But defendants could not, in law or in justice, demand that plaintiff vacate that parcel, nor that he demolish any part of his warehouse, even in the event that any part of the building had been comprised within the boundaries fixed by the said surveyor, as Manotoc did not in bad faith build on another's land, for Flora Choco admitted that, ever since she could remember, she had known that the land in question belonged to Clemente Manotoc. It ceased to be his only by the irrevocable force of the decree of adjudication of the Court of Land Registration, although it was illegally lost to its legitimate owner by reason of it having been included in the applicants' title in the manner stated in the recital of the facts.

Third. That if, by the placing of landmarks to include a part of the warehouse floor, plaintiff has not lost any part of his warehouse, since he has a right to maintain his building entire on the part of the ground that he has now recently lost and that has passed into the applicants' possession in an unlawful manner, as he falls within the provisions of article 361 of the Civil Code, it is not yet proper and it would be out of place prematurely to decree

that the defendant-appellants must pay to the plaintiff-appellee P153 as damages, as if the former, by the irrevocable force of the decree of adjudication of the Court of Land Registration, had become the owners of a part of Clemente Manotoc's building or warehouse, merely because they had become the owners of the ground on which that building or warehouse stands.

- By virtue of the foregoing facts the judgment appealed from is reversed in so far as it sentences the defendants, Flora and Severina Choco, to pay to Clemente Manotoc P183, the value of nearly one-third of the warehouse, which is the plaintiff's exclusive property.

- The judgment appealed from is affirmed in so far as it sentences the defendants, Flora and Severina Choco, to pay to Clemente Manotoc, P21.76, the value, at the rate of P2 a square meter, of the 10.88 square meters of ground occupied by the said part of the warehouse, with legal interest on this amount from the date of the filing of the complaint; without special finding as to the costs of first instance.

The conclusions of law upon which these pronouncements are based, are the following:

First. If it had clearly appeared in the plan which accompanied the application filed with the Court of Land Registration, that the 10.88 square meters of ground situated within the walls of Clemente Manotoc's warehouse were included in the land applied for, plaintiff, by his failure to appear and object to such inclusion, would now have no right of action for damages for the loss of that portion of his property. Section 101 of Act No. 496 grants such right of action to "any person who, without negligence on his part, is wrongfully deprived of any land * * * by the registration of any other person as the owner of such land;" and, on this hypothesis, Manotoc would have been deprived of that part of his land by the fact of Flora and Severina Choco having been registered as the owners thereof, and he would have no right to any indemnity, because, through his negligence in failing to appear at the trial, he failed to see that his property was manifestly being taken from him.

Second. But, as the said inclusion does not plainly appear on the plan, according to the testimony of the expert, Tomas Arguelles, for nothing but lines are to be seen therein and none of the warehouse walls are shown, even though plaintiff had appeared at the hearing, he would not have been able to understand that the said part of his property was being taken from him, nor would he have filed an opposition; only upon the making of the survey by the aforesaid surveyor, would he have noticed, as only then he did notice, that landmarks were being placed and that these took in 10.88 square meters of his land which were protected by the walls of his warehouse; then of course an occasion and opportunity would have been offered him to appear before the Court of Land Registration in defense of his property that was being improperly included in the survey, had the survey been made within the year following the date of the decree of registration in accordance with the provisions of section 38 of the said Act No. 496. But the decree of registration was issued, as aforesaid, on January 30, 1906, and applicants' petition for the survey of their land was not made until December 5, 1908. No notification of this petition was served on Clemente Manotoc, notwithstanding that the motion recited that its purpose was "to determine the true boundaries of the same in the part thereof lying adjacent to the land of Clemente Manotoc." After the year had elapsed, Manotoc could not effectively appear in the proceedings before the Court of Land Registration "to pray for the review thereof," as authorized by said section 38; but he did appear, in order that it might not be claimed that he was negligent, and that which was bound to occur, occurred, to wit, the year having elapsed, his petition for review could not be allowed, and it was not allowed. The case was completely terminated; the inclusion of that part of Clemente Manotoc's lot was consummated without negligence whatsoever on his part and without his being notified of the survey. No motion for this purpose was made by the applicants until they had allowed two years and a half to elapse, and now in this action one of them admits that, ever since she could remember, she knew that that lot belonged to Clemente Manotoc.

Third. It is possible that, in view of our conclusions, the applicants may not desire to take advantage of the efficacy and irrevocable nature of their registered title, by virtue whereof they have gained the ownership of the 10.88 square meters of land occupied by a part of appellee's warehouse. On page 6 of their brief, they say: "Plaintiff, then, not having been deprived of the enjoyment and possession of his land and building, we see no reason why he should be awarded damages." Construing these words in their legal sense, to wit, that the plaintiff has not actually been deprived of his land and building by the title secured by applicants from the Court of Land Registration, and as this statement was made during the trial, it is obvious that there is no reason why plaintiff should be awarded damages; the reason for indemnity of this sort is the unjust loss of property by an effective and irrevocable entry in the property registry, and if the property has not been lost, the judgment awarding the indemnity should be reversed. But if these words are to be understood in the sense that appellants, in spite of this effective and irrevocable entry in the registry, do not intend to molest appellee in the enjoyment and possession of his property, then the judgment appealed from ought not to be reversed, as such an intention is not a judicial act; and, it having been decided in the proceedings in the Court of Land Registration that the strip of land, indicated by the landmarks which take in 10.88 square meters of the ground on which appellee's warehouse stands, is now the property of the appellants on account of its being included, though improperly, but irremediably, in their property title, the judgment awarding the said indemnity is in harmony with the provisions of section 101 of Act No. 496; however, by private agreement, the right and the obligation, likewise established in other judicial decisions, may be left unexercised and unfulfilled.

As regards the two parcels (a) and (c), of 49.27 and 13.92 square meters in area, respectively, the facts relating thereto are those given above and in addition, the following:

- That a part of the evidence presented by plaintiff consists of a rough sketch which defendants attached to their declaration relative to the assessment of the land in question. Therein the parcel (a) is shown to have an area of only 39.08 square meters, and the parcel (c), that of only 8.36 square meters. So that both of them together, totalling 47.44 square meters, do not even equal the actual area of the parcel (a), which is 49.27 square meters.
- That in the petitioners' first plan, the land for which they obtained title had a total measurement of 1,777.299 square meters; but an amendment of that plan having been ordered, the land was found to contain 1,772.189 square meters, and this will be the fixed area which will appear in the title, if no further rectification has been made. But in the possessory information title presented by applicants, the larger parcel is shown to contain 873.41 square meters, and the lesser one, according to its title, 73.35 square meters, or a total area of 946.76 square meters for both parcels. The 1,772.189 square meters is, therefore, more than 826 square meters in excess of this total area of 946.76 square meters.
- That, in the plan presented by the petitioners for the assessment of their land, there appears no indication of any other area in the part thereof bounded by Manotoc's lot and behind the wall which indicates the "camarin (frame building) or stable," parcel (a); nor of any area behind the wall which indicates "Flora Choco's azotea," parcel (c). However, the said expert surveyor, Tomas Arguelles, found that the landmarks placed by the Court of Land Registration taking in 74.07 square meters of Manotoc's property were outside of those walls; that the parcel (a) as aforesaid, contains 49.27 square meters and is worth P2 per meter, and the parcel (c), 13.92 square meters, is worth P4 per meter. This estimate of area and valuation was not challenged.
- That this same expert testified that when he makes plans, he indicates whether there are walls, whether these appertain solely to one property, and whether within their inclosure there is any property that belongs to other persons, for "these are data which generally should be given by the surveyor, because in many cases the ignorant proprietor does not know of these facts, and, in the event of litigation, the court would otherwise have no idea of the true situation and condition of the land."

- In the opinion of the majority of this Supreme Court, defendants should also pay the value of these two portions of land which plaintiff has lost, illegally, without negligence on his part, and without having an opportunity to ask for a review of the decree of adjudication, since, not until the landmarks were placed as a result of the survey made two years and a half after the termination of the proceedings for registration, could the plaintiff have become aware that the plan presented by petitioners passed beyond the limits of the walls of the azotea and of the camarin or stable, which, in the opinion of the plaintiff and his six witnesses who testified in the present case, were considered to be the dividing line between both properties.

- It is also the opinion of the majority, that defendants should also pay the value of the light-material houses removed from parcel (a) and which were estimated to be worth P137, a valuation not disputed at the trial, for the same reason that defendants put forward in praying for the removal of these building: "The aforementioned buildings," they said, "already stood where they now are, even before the commencement of this suit (since the year 1901, according to the affidavits they presented and their own testimony in this case), and if the owners of these buildings were not, as the occupants thereof, included in the application filed, it was due to the fact that the applicants did not then know the location of the true and correct boundaries of their land on the side adjacent to the property of Clemente Manotoc."

If, during the course of the proceedings before the Court of Land Registration, the petitioners did not know how far the true and correct boundaries of their land extended on the side adjoining Clemente Manotoc's property, we fail to understand how plaintiff could be negligent in not having prevented the petitioners from passing beyond the true and correct boundaries of their land; for if these latter did not know what the boundaries were still less should they be known to any one else. And, notwithstanding that the petitioners did not know these boundaries at the time of the trial yet, two years and a half after the termination of the case they obtained those parcels (a) and (c) and ejected therefrom the tenants who, for those buildings, paid rental to Clemente Manotoc, and petitioners had themselves registered as the owners of the said two parcels (a) and (c).

The judgment appealed from is modified and the record will be returned to the lower court with instructions to render a new judgment in conformity with this decision. Without special findings as to costs of this instance. So ordered.

Mapa, Moreland, and Trent, JJ., concur.

Carson, J., dissents.

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